

WIPO



SCCR/6/4

ORIGINAL: English

DATE: December 20, 2001

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WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA

STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

Sixth Session

Geneva, November 26 to 30, 2001

REPORT

adopted by the Committee

1. The Standing Committee on Copyright and Related Rights (hereinafter referred to as the “Standing Committee” or “SCCR”) held its sixth session in Geneva from November 26 to 30, 2001.
2. The following Member States of WIPO and/or members of the Berne Union for the Protection of Literary and Artistic Works were represented in the meeting: Algeria, Andorra, Antigua and Barbuda, Argentina, Australia, Austria, Azerbaijan, Bahrain, Barbados, Belarus, Belgium, Benin, Brazil, Bulgaria, Canada, China, Colombia, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, France, Germany, Ghana, Greece, Guatemala, Haiti, Honduras, Hungary, India, Indonesia, Ireland, Italy, Jamaica, Japan, Kenya, Latvia, Lithuania, Mauritius, Mexico, Mongolia, Morocco, Netherlands, Nicaragua, Nigeria, Norway, Pakistan, Philippines, Portugal, Republic of Korea, Russian Federation, Senegal, Singapore, Slovakia, South Africa, Spain, Sudan, Sweden, Switzerland, Thailand, Tunisia, Turkey, United Kingdom, United States of America, Ukraine, Uruguay, Uzbekistan, Venezuela and Zimbabwe (73).
3. The European Community participated in the meeting in a member capacity.
4. The following intergovernmental organizations took part in the meeting in the capacity of observers: International Labour Organization (ILO), United Nations Educational, Scientific and Cultural Organization (UNESCO), World Meteorological Organization (WMO) and *Organisation internationale de la francophonie* (OIF) (4).
5. Representatives of the following non-governmental organizations took part in the meeting as observers: Agency for the Protection of Programs (APP), American Bar Association (ABA), Asia-Pacific Broadcasting Union (ABU), Association of European Performers’ Organisations (AEPO), Association of Commercial Television in Europe (ACT), Canadian Cable Television Association (CCTA), Caribbean Broadcasting Union (CBU), Central and Eastern European Copyright Alliance (CEECA), Copyright Research and Information Center (CRIC), European Broadcasting Union (EBU), European Federation of Joint Management Societies of Producers for Private Audiovisual Copying (EUROCOPYA), European Group Representing Organizations for the Collective Administration of Performers’ Rights (ARTIS EEIG), Ibero-Latin-American Federation of Performers (FILAIIE), International Association of Broadcasting (IAB), International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), International Confederation of Music Publishers (ICMP), International Federation of the Phonographic Industry (IFPI), International Federation of Actors (FIA), International Literary and Artistic Association (ALAI), International Publishers Association (IPA), International Video Federation (IVF), Max-Planck-Institute for Foreign and International Patent, Copyright and Competition Law (MPI), National Association of Broadcasters (NAB), National Association of Commercial Broadcasters in Japan (NAB-Japan), North American Broadcasters Association (NABA), Performing Arts Employers Associations League Europe (PEARLE*), Software Information Center (SOFTIC), Union of Industrial and Employers’ Confederations of Europe (UNICE), Union of National Radio and Television Organizations of Africa (URTNA) and Union Network International–Media and Entertainment International (UNI-MEI) (30).
6. The session was opened by Mr. Shozo Uemura, Deputy Director General, who welcomed the participants on behalf of Dr. Kamil Idris, Director General of WIPO.
7. The List of Participants is attached to this Report as an Annex.

ELECTION OF OFFICERS

8. The Standing Committee unanimously elected Mr. Jukka Liedes (Finland) as Chairman, and Mr. Shen Rengan (China) and Mr. Carlos Teysera Rouco (Uruguay) as Vice-Chairmen.

ADOPTION OF THE AGENDA

9. The Standing Committee unanimously adopted the Agenda (document SCCR/6/1).

PROTECTION OF DATABASES

10. The Chairman gave a brief review of the issue of the protection of non-original databases. He indicated that at the last session of the SCCR some interest in the topic had been expressed, but no conclusions had been drawn. He asked whether any delegations wanted to report on the latest developments that had taken place at the national and international levels concerning the protection of databases.

11. The Delegation of the United States of America indicated that the matter had been under active consideration in the House of Representatives and that it had also been discussed with interested parties. Some consensus had been reached between the proponents of database protection and some of the concerned user groups. Certain key differences remained to be solved. However, the recent events of September 11 that had taken place in the United States of America had delayed progress on the issue.

12. The Delegation of the Russian Federation informed the Standing Committee that a draft federal bill was under preparation dealing with the protection of non-original databases. It reiterated its support to the elaboration of a new international instrument on the issue. A number of provisions may be highlighted, such as definitions of the basic concepts, the list of exclusive rights, exceptions to those rights and other traditional provisions. The structure of such an instrument had to be based on the structure proposed in document CRNR/DC/6 prepared for the 1996 Diplomatic Conference. When dealing with specific provisions it would be advisable to focus on exceptions to the exclusive rights in order to exclude the negative impact of such rights.

13. The Delegation of Algeria, speaking on behalf of the African Group, expressed its interest in the results of the study on the economic impact of the protection of non-original databases. It thanked the Secretariat for the efforts deployed to this end.

14. The Delegation of Australia informed the Standing Committee about a decision of the Federal Court of Australia which had granted protection to the white pages of the telephone directory as a literary work.

15. The Delegation of Singapore requested further information from the Australian Delegation about the *rationale* of that decision.

16. The Delegation of Australia replied that the Court considered that there was sufficient originality in the compilation of the data in the directory. In reaching this conclusion, the Court had analyzed extensively earlier court decisions, notably from the United Kingdom.

17. The Chairman concluded the discussions relating to the developments in some countries and noted that the matter would be included in to the agenda of the next SCCR.

PROTECTION OF THE RIGHTS OF BROADCASTING ORGANIZATIONS

18. The Chairman indicated that the issue had been under continued consideration since 1998, and pointed out that two new proposals had been received from governments. The first had been submitted by the European Community and its member States, in document SCCR/6/2, and the second by Ukraine, in document SCCR/6/3. An updated comparative table containing proposals so far received had been made available to the Standing Committee as a room document.

19. The Delegation of the European Community referred to its proposal in treaty language which was intended to be a constructive contribution to the discussions in the Standing Committee. It highlighted four issues which would merit more profound discussions. First, there was the question about the relation between an improved protection for broadcasting organizations and the rights of authors in works and the rights of holders of related rights in protected subject matter contained in broadcasts. That issue was addressed in paragraph 4 of the Preamble and in Article 1. Second, the Delegation wondered which definitions would be needed in the future treaty. A definition of the term “broadcasting” was contained in Article 1*bis*. Third, Article 10 of the proposal contained a provision relating to the “protection in relation to signals prior to broadcasting.” However, further consideration was needed regarding the need, the nature and the circumstances of such protection. Finally, in order to qualify an act as “broadcasting,” the means of transmission should not matter. Broadcasting could be a transmission by wire or over the air, including by cable or by satellite. That was the way it had been defined in Article 1*bis* of the proposal. Not every transmission, however, would qualify as broadcasting. The proposal of the European Community sought to draw to the maximum upon existing international rules, particularly the Rome Convention and the WPPT. The first two paragraphs as well as the first parts of paragraphs (3) and (4) of the Preamble stemmed from the WPPT. Article 1 was based on Article 1 of the WPPT. Article 1*bis* on “definitions” was based on Article 2(f) of the WPPT and included an additional element on “mere retransmissions,” which was successfully applied in Community law. Article 2 on “beneficiaries of protection” was almost identical with Article 6 of the Rome Convention. However, an addition had appeared appropriate with respect to satellite broadcasts. Article 3 on “national treatment” was a combination of Article 2(1)(c) of the Rome Convention and Article 4 of the WPPT. Chapter II of the proposal contained the rights of broadcasting organizations and other related provisions. The rights of fixation (Article 4), of reproduction (Article 5), of retransmission (Article 6) and of communication to the public (Article 8) were based on Article 13 of the Rome Convention, whereas Articles 7 (right of making available), 9 (right of distribution), 11 (limitations and exceptions), 12 (term of protection), 13 (obligations concerning technological measures), 14 (obligations concerning rights management information), 15 (formalities), 16 (reservations), 17 (application in time), and 18 (enforcement) were based on the WPPT.

20. The Chairman proposed that the Standing Committee addressed the issues in the order suggested by the table of contents of the analytical table prepared by the Secretariat. First, definitions had to be addressed (in particular, broadcasting, broadcasting organization, retransmission including rebroadcasting and cable transmission, communication to the public, fixation), secondly, the clauses on beneficiaries and national treatment should be looked at

and finally individual rights that had to be addressed. The application in time had to be discussed also.

21. Regarding definitions, “broadcasting” was defined in several submissions. “Broadcast” and “rebroadcasting” were also addressed by some submissions. In the proposal of Argentina, “retransmission,” “transmission,” “cable distribution” were defined. The concept of “communication to the public” had been defined in several submissions. The definition of “broadcasting” was the core issue, and the Chairman suggested that the Standing Committee should first address that issue. The scope of the future new treaty was to be governed by that definition. He indicated that the WPPT had been followed as a model, although some differences could be found. The European Community had included in its submission “transmission by wire,” whereas the Japanese proposal covered only transmission by “wireless means.” The proposal of Argentina referred only to “wireless means,” but cable originated transmissions were also addressed in the proposal. He asked whether the definition of broadcasting would include transmission by wire in addition to transmissions over the air, and whether transmissions over the net would have to be assimilated to transmissions by cable.

22. The Delegation of Algeria, on behalf of the African Group, thanked the European Community and its member States and Ukraine for their proposals. It stressed that it was important to make progress on the issues. The African Group was committed to scrupulous respect of copyright and related rights principles and indicated that the discussion relating to the broadcasting organizations rights would have to take place within the principles of copyright protection. The Delegation reiterated its support in favor of an international instrument relating to the rights of broadcasting organizations and stressed that an adequate balance of rights between all parties concerned would have to be established. It was necessary to modernize the rights of broadcasting organizations to take account of the technological developments that had occurred since the adoption of the Rome Convention. A revision of the conventional concepts was favored. The African Group supported a broad scope for the protection given by the future instrument and that required precise definitions of the concepts involved in particular “emission,” “broadcasting,” “transmission by cable,” “making available to the public,” “rebroadcasting” and “fixation.” It intended to participate fully in the discussions.

23. The Delegation of China thanked the Delegation of the European Community for its comprehensive submission and indicated that although it had not yet presented a specific proposal, it intended to participate actively in the discussions. The Delegation informed the Standing Committee of the adoption of a new copyright law in China in October 2001. With the amendments adopted, China had raised its protection for authors, performers and producers to a new level and had extended the scope of protection of copyright. The Delegation explained that the copyright holder of computer software would be treated on an equal footing with the creator of a literary work. The term of protection was also the same as for literary works. A right to disseminate through information network had been created. Although the name was different, the nature of the right was the same as the “right of making available.” Special provisions in accordance with the WCT and the WPPT had been put in place and protection of technical measures and right management information would have been implemented by the new legislation. Databases were protected under Chinese legislation according to two criteria. If the database was to be considered as a creative work, it was protected as a work of compilation. If the database was not a creative work, interested parties were currently discussing the possibility of granting a protection for such database.

24. The Delegation of the United States of America referred to the consultation process that had been launched with broadcasting organizations and other interested circles in its country with the aim of developing a national position on this issue. In those discussions, it had been very useful to have the information that had been communicated to WIPO and the proposals submitted by the different countries. Those would help its country as it tried to develop its own proposal. In the United States of America, broadcasters had been granted substantial protection either under copyright legislation or under telecommunications law. The process which had been launched was looking at how those rights would be balanced under national law, with a view to putting forward a proposal to WIPO in the future.

25. The Delegation of Switzerland welcomed the new proposals, particularly the European Community's proposal which was based on the Rome Convention and the WPPT and had similarities with its own proposal that had been put forward in an earlier session. The European proposal tackled crucial issues and proposed effective solutions rooted in the longstanding experience of the Communities on the protection of broadcasting organizations. There was also a positive point in the European proposal in that it sought to strike a balance among the involved parties with a certain flexibility.

26. The Delegation of India pointed out that the Indian Copyright Act offered protection to broadcasters by giving them broadcasting production rights. It defined broadcasting as communication to the public by diffusion by wire or wireless means. The Delegation informed the Committee that its Government followed a transparent consultative process among the stakeholders. In that connection, it had established a core group for consultations in the Ministry of Human Resources Development that included representatives from the general public and industry.

27. The Delegation of Venezuela, speaking on behalf of the Latin American and Caribbean Group, declared that the Group had had two meetings to exchange information on various issues concerning the present session of the Standing Committee. The Group would inform the Committee, at a later stage, about any common position adopted by the Group.

28. The representative of the Association of Commercial Television in Europe (ACT) welcomed the proposal of the European Community and its member States. It took the Rome Convention as a good starting point, and the articles in that proposal dealing with fixation (Article 4), reproduction (Article 5) and communication to the public (Article 8) had a modern interpretation of that Convention. The rights of making available (Article 7) and distribution (Article 9) matched the equivalent provisions of the WPPT. The broad definition of retransmission (Article 6) included cable retransmission and thereby filled an old gap created by the Rome Convention and tackled the modern phenomenon of streaming. Likewise, the protection of pre-broadcast signals (Article 10) addressed a contemporary issue. Pre-broadcast signals, however, merited further consideration as broadcasters needed clear rights to take action against pirates. Also, the notion of communication to the public should not be confined to places where an entrance fee was paid. Moreover, the "first time" referred to in the provision on the term of protection (Article 12) was not necessary. Finally, he regretted the fact that Article 1*bis* referred to "for public reception" instead of "for reception by the public."

29. The representative of the International Association of Broadcasting (AIR) welcomed the two new proposals. He found, however, that the proposal of Ukraine was not sufficiently clear since it granted no minimum rights to broadcasters but mentioned such rights in its provision related to national treatment. As to the European proposal, he pointed out that some

issues should be reconsidered. The definition of broadcasting should be the same as in the WPPT which excluded wire transmissions. Also, four points had to be taken into account when determining the object of protection in the treaty: (i) the protection of broadcasting signals as the natural object of protection; (ii) the protection of wire transmissions generated by broadcasting organizations; (iii) the protection of pre-broadcast signals; and (iv) Internet transmissions.

30. The representative of the European Broadcasting Union (EBU) referred to the forum held in Manila in 1997, and pointed out that since then the international community had recognized the needs of, and supported the updating of, broadcasters' rights. She welcomed the proposal of the European Community and its member States but, as the observer of ACT, she had some reservations. The need of having a new treaty for broadcasters was more and more urgent, and her organization was ready to assist governments in legal or factual matters related to that updating process.

31. The Chairman proposed a work program that included, as a first step, discussion on the definitions. Regarding the concept of broadcasting, he pointed out that the inclusion of transmissions over the air, by satellite, encrypted broadcasts, transmission by wire and Internet transmission had to be considered.

Definitions

32. The Delegation of Singapore pointed out that, as to the definitions, there was a difference of scope among the proposals presented. The European proposal included transmissions by wire, over the air, by cable or satellite. The Japanese proposal referred to wireless and satellite transmissions. The Argentine proposal referred to wireless and satellite. He reminded the Committee that the WPPT only referred to wireless transmissions. Also, to make things more complicated, the proposal of Japan included in the definition of rebroadcasting simultaneous broadcasting. Finally, he sought clarification on two issues, namely, the difference between cable and wire transmissions in the definition of broadcasting of the European proposal was based on the notion of broadband and whether the notion of transmission over the Internet included webcasting.

33. The Delegation of Japan acknowledged the importance of webcasting, but that was a kind of activity which could be conducted without large investment. A computer and a telephone line or cable was enough to transmit original materials, such as home-made movies, on the Internet. In that respect, it asked if the European proposal intended to give protection to such a personal webcasting entity. In the Japanese copyright law, there was a clear distinction between wire diffusion and webcasting. The Delegation expressed its preference for excluding wire diffusion from the scope of protection of the treaty. It might be appropriate that the discussion on webcasting should be independent from that of the new instrument.

34. The Delegation of Australia indicated that its Government would hopefully be able to express its position at the next session of the Standing Committee. However, at the present stage, one of the most important questions was whether the definition of broadcasting should be confined only to over the air transmissions or should include cable or wire transmission. It noted the views of the Swiss and Japanese Delegations on the need to keep consistency with the existing treaties, particularly the Rome Convention and the WPPT, but in order to achieve technological neutrality, the inclusion of wire transmissions in the European proposal might

be more acceptable. It supported the statement of the Delegation of Japan regarding the exclusion of webcasting by individuals from the definition of broadcasting and remarked that the definition offered by the Argentine proposal regarding broadcasting organizations together with the definition of broadcasting was a possible way to shape the contours of the protection to be granted. Finally, it pointed out that the difference between real time streaming and interactive webcasting should be a matter of consideration when defining broadcasting.

35. The Delegation of Argentina stated that defining the terms in a new treaty was a delicate and important step, but elaborating the protection of broadcasting organizations through the definitions could be very dangerous. It supported the proposals of previous delegations regarding the consistency with the definitions included in existing treaties and expressed itself against the redefinition of terms.

36. The Delegation of Andorra shared the view of many delegations that the definition of broadcasting should not deviate from the WPPT, particularly if the instrument would become a protocol to the WPPT. The Committee had to be careful in not adopting an obsolete treaty for broadcasters. The treaty should cover new technologies like broadband and cable. Finally, the scope of protection should not be determined through the definitions.

37. The Chairman informed the Committee that a written list of basic notions to be defined had been prepared and distributed to the participants in order to assess the need for inclusion of such definitions (document CRD/SCCR/6/1). The list had been prepared based on the proposals. He invited the Committee to discuss the first group of terms under “broadcasting.” Some notions such as “broadcasting by satellite” or “encrypted broadcasting” were not included as they could be discussed within the definition of “broadcasting.” “Broadcasting organization” referred to the person or entity engaged in broadcasting, and “broadcasting” to the act of transmission, whereas “broadcast” referred to the object of that act, the signal carrying the broadcast content. In operational clauses, the term “broadcasting” was used mainly to define a broadcasting organization, which meant to qualify an organization engaged in the act of broadcasting. Different views had been expressed in the discussions of the previous day. Some had been of the opinion that “broadcasting” should be defined in a classical way as in the Rome Convention, which had been modernized by the WPPT. The WPPT confined “broadcasting” only to over-the-air broadcasting, but clarified that transmission by satellite and certain encrypted broadcasting were also included in “broadcasting.” Others, the European Community for instance, opted for a broad definition of “broadcasting” by embracing transmission by wire.

38. The Delegation of the Russian Federation supported the definitions of “broadcasting” as included in the proposals by Argentina and Japan. That approach made it possible to keep a single terminology as contained in the Rome Convention and the WPPT. The same rights should be granted to cable distribution organizations as to over-the-air broadcasters in the new instrument, at least in case they were engaged in similar activities. Cable originating programs could be protected by defining them separately. As for the question of “webcasting,” it was important to solve the issue, but, as had been noted by the Delegation of Japan, it should be discussed carefully.

39. The Chairman noted that the differences in the opinions concerning definitions of “broadcasting” were not fatal. The definition of “broadcasting” confined to over-the-air broadcasting could be a workable basis. The definition of “broadcasting” as contained in the proposal by the European Community could also be an operational basis, if necessary, distinctions between over-the-air broadcasting and transmission by wire should be made.

40. The Delegation of Andorra asked for clarification on the scope of protection. In the Rome Convention and the WPPT, the term “broadcasting” was defined for the purpose of clarifying the rights of neighboring rightholders to authorize or prohibit broadcasting of their protected subject matter. However that was not the purpose of discussions here. What was needed there was a good definition of the object of protection. The object of protection was not “broadcasting” but broadcasting signal.

41. The Chairman agreed that what had to be discussed was who and what should be protected against what. The broadcast of a broadcasting organization should be protected, and “broadcast” or “broadcasting” could be defined for that purpose. He further stated that one should not be overly concerned about those notions as understood in the context of other instruments, in which those notions were often used to define the right of the rightholder to authorize or prohibit the act of broadcasting. In the discussions of the Standing Committee, there seemed to be general support for relying on the definition of “broadcasting” as contained in the WPPT, with the exception of the European Community which had proposed to embrace wire transmissions in the notion of “broadcasting.”

42. The Delegation of Switzerland noted that certain proposals broadened the notion of “broadcasting” and that should be further discussed. The views of the non-governmental organizations should also be discussed and included in order to have a comprehensive understanding of the situation and problems. The definition of “broadcasting” would have an impact on the scope of the instrument. It might be important to maintain a unity with other treaties in terms of terminology. However, the fact that the definition of “broadcasting” in the WPPT was different from that contained in the Rome Convention should also be taken into account. It was also necessary to decide whether cable television and “webcasting” should be included. It should also be considered that any new protection might affect the balance between the different categories of rightholders.

43. The Delegation of Australia stated that if the notion of “broadcasting” was to be confined to over-the-air transmission, it was important to define “broadcast.” In case “cablecasters” were to be protected, then what they transmitted should also be covered. The definitions contained in the Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite (the Brussels Convention) could provide useful guidance.

44. The Chair said that defining a “cablecaster” was not difficult in that the relevant elements for the definition of transmission by wire were already included in the proposal of the European Community. Cable transmission was obviously included in transmission by wire.

45. The Delegation of the European Community stated that while it was important to define terms for the sake of legal certainty and with a view to providing guidance, it was not necessary to define everything in order to have an operational and pragmatic instrument. Certain notions were left to the national regimes in the Rome Convention. It was difficult to define the object of protection. The terms “broadcast” or “broadcasting organization” were not defined in the Rome Convention, and the necessity of including such definitions could be questioned. The scope of the international protection of broadcasting organizations should be widened where necessary. The European Community believed that it was necessary to cover certain transmissions by wire or by cable as “broadcasting,” as a Rome-plus element. However, not every transmission was broadcasting, and a line should be drawn. The mere retransmission of broadcasts of other broadcasting organizations, and an interactive act of making available, were not broadcasting within the meaning of the discussed instrument. In

respect of “webcasting,” it was difficult to draw a line between what should be protected and what should not. It had been suggested by some that “broadcasting organization” should be defined to solve the problem. That, however, could result in an undesirable mixing of broadcasting policy and copyright and related rights policy. No related rights treaty included such a definition. Defining the beneficiaries of the new instrument might be useful, but more input was needed for discussions on that issue. An extreme example was that of a person running a homepage for public reception. It could be agreed that such a person should neither be considered as a broadcasting organization, nor enjoy the protection accorded to broadcasting organizations. Although “webcasting” was one of the crucial issues concerning the new instrument, definitions should be limited to an operational minimum. Otherwise the instrument might achieve a high degree of certainty but might at the same time limit the flexibility allowed for joining parties.

46. The Chairman stated that the consideration of definitions should not be an obstacle in the discussions, but rather serve to establish the language to be used in the instrument, even if fixed definitions on all notions were not included in the final outcome.

47. The representative of the International Literary and Artistic Association (ALAI) noted that in all proposals the definition of the object of protection had been overlooked. The object of protection of the new instrument should pertain to the program-carrying signal, and not the content. That should be included in the definition of “broadcast” to exclude any undesirable elements.

48. The representative of the International Confederation of Societies of Authors and Composers (CISAC) stated that the relation between original creators and broadcasting organizations was symbiotic, and expressed his organization’s support for the protection of such organizations not only through contracts but also in relation to intellectual property. However, caution was urged in extending intellectual property rights to new methods of exploitation such as “webcasting,” not only with regard to the definitions but also in the overall instrument, including the provisions on exceptions and limitations.

49. The representative of the International Association of Broadcasting (AIR) was of the opinion that the following should be the object of protection: broadcasting signals for wireless transmission; transmission by cable and wire; and pre-broadcast signals. More experience would be required before examining the issue of “webcasting.” The definition of “broadcasting” should be confined to wireless transmission. That was the current concept of understanding as well as the definition adopted by the International Telecommunication Union (ITU) and in the majority of national legislations. Confining the notion of “broadcasting” to over-the-air retransmission did not mean that wire transmission was not protected. That could be added. The question of whether the term “emission” should be defined or not depended on how the object of protection would be defined. If the definitions were confined to the essential minimum, a definition of “emission” would be necessary to the extent that it was necessary to specify the object of protection. With a view to broadening the definition as contained in the Rome Convention, the term “emission” could be defined as “transmission by wire or wireless means for public reception of sounds or of images and sounds, including in electronic form.”

50. The representative of the International Federation of the Phonographic Industry (IFPI) noted that the discussion could not move forward without addressing the fundamental questions of who should be protected and why. It was not a good option not to include some definitions. In her organization’s view, providers of Internet-based services such as

“webcasters” were not broadcasting organizations. Broadcasting organizations were protected, *inter alia*, by reason of their investment and the role they played in the communication of culture. There was no such valid justification to extend the protection to “webcasters,” and the extension of protection would have undesirable consequences on existing rights and systems. Internet-based services, which had just started to develop, were radically different from traditional broadcasting organizations.

51. The representative of the National Association of Commercial Broadcasters in Japan (NAB-Japan) referred to the difference between broadcasting and “webcasting.” In webcasting, transmission took place only upon access by the public to a computer server and the use of a telephone line. A broadcasting organization, on the contrary, could transmit its broadcast to the public without any access from a receiver. That was a fundamental difference. Broadcasting was the basic information communication tool in most parts of the world. Webcasting was not a principal medium. Therefore interactive transmission, including webcasting, should be excluded from the scope of protection under the discussed instrument. That issue could be dealt with after an instrument on traditional broadcasting had been adopted.

52. The representative of the National Association of Broadcasters (NAB) stated that an instrument to update the protection of broadcasting organizations had been long awaited. The discussion on whether “webcasters” should be included or not might delay the conclusion of a new instrument. Little experience and information was available concerning the protection of “webcasters” in the form of domestic legislation. The broadcasting organizations had demonstrated that there was a clear and present danger which needed to be addressed. Substantial efforts and resources went into the organization and scheduling of program-carrying signals. That could be relevant in drawing a line between what should be protected and what should not. The representative of the National Association of Broadcasters (NAB-Japan) had referred to the lack of universal access as a characteristic of “webcasting.” That could be reflected in the wording “for public reception,” contained in several proposed definitions to clarify what was meant by those terms.

53. The representative of the International Confederation of Music Publishers (ICMP) stated that the object of protection should be the signals, as opposed to the content, to maintain the balance among different categories of rightsholders. “Webcasting” should not be confused with broadcasting.

54. The Chairman indicated that one of his preliminary conclusions would be that most speakers who had taken the floor were either hesitating as to, or expressly against, the inclusion of webcasting as part of the system of protection envisaged by a new treaty. The proposals of Argentina and Japan excluded protection for webcasters, and no other proposal explicitly included such protection. The proposal by the European Community would exclude interactive and on-demand transmissions. In the situation in which a broadcast was simultaneously retransmitted by other means, such as for example, by cable, satellite and/or Internet, should broadcasting organizations have protection against such a scenario? He suggested that the Committee consider and define the criteria relevant to the scope of protection and how, therein, to exclude operations over the Internet. Also, the new forms of digital television, whether terrestrial or satellite possessed qualities similar to access controlled transmissions.

55. The representative of the National Association of Commercial Broadcasters in Japan (NAB-Japan) provided the example of digital television in Japan. There were five or six

services available. The working paradigm had two qualities: first, the signal goes from the broadcasting station to the receiver; and second, the system is capable of transmitting from the receiver to the broadcasting station *via* Internet. The second scenario is not deemed to be part of the broadcasting. EPG is a system by which channels are selected but the selection is not interactive.

56. The Chairman noted that in his country, it was mandatory for every set-top box to contain a modem.

57. The representative of the National Association of Broadcasters (NAB) stressed that the subjects under discussion required much further clarification. He indicated that in the United States of America developments were moving forward in respect to digital and high definition television. In this context, a broadcaster could choose an ultra-high definition signal, or merely a lower standard of digital definition coupled with other options, so-called "multi-plexing." Such other multi-plex channels might contain, for example, subscription content, advertising-supported content, or data-casting. Business models concerning those developments were emerging. He urged that the protection to be defined by the Committee should be for the signals carrying all of this programming but for signals only, and not apply to the content. Regarding the Chairman's information regarding modems in set-top boxes in Finland, he suggested that to the extent this would involve storage of signals for on-demand this would involve the right of making available to the public, which would be a different discussion than the one currently before the Committee.

58. The representative of the North American Broadcasters Association (NABA) expressed her view that the treaty should cover over-the-air and cable broadcasting, but not webcasting, which was still too new, too uncertain and too controversial. Regarding digital broadcasting, she noted that it involved the same broadcasting output, and should be protected in the same manner as analog broadcasting. The fact that multi-plexing of signals provided better scheduling choices did not change the basic nature of the signal.

59. The Chairman noted that there had not yet emerged clear criteria for the distinction between cable transmissions and webcasting.

60. The representative of the International Video Federation (IVF) said that his organization had not yet taken a position with respect to the treaty. There were several new and emerging forms and means for content to enter the home, and that not all of them should be considered broadcasting. He pointed out the connection between technical developments in protection for the rights of broadcasting organizations, and similar developments in the field of digital rights management.

61. The Chairman suggested that it would be necessary for the Committee to elaborate and define criteria as to excluding webcasting from the purview of the object of protection envisaged under the treaty and, in that context, questioned whether there were operations over the Internet which might be included.

62. The Delegation of Switzerland said that the Committee must be cautious with respect to definitions, so as not to create confusion. The definition of broadcasting must be flexible and not too specific; he pointed to the proposal of the European Community in this regard. Further discussions on the possible beneficiaries of protection must take into consideration the impact, if any, on rights defined in the WPPT, which contained a more "traditional" definition of broadcasting.

63. The Delegation of Ghana referred to the proposal tabled by the African Group, and reiterated that any definitions agreed to by the Committee must be as broad as possible, taking into consideration the impact and development of new technologies as well as striving to balance the different interests of the respective stakeholders and interested circles. The treaty should include the widest possible protection for broadcasting organizations. He raised the question of protection for broadcasts carried over the Internet as well, noted that compatibility with the WPPT was necessary and stated that the issue of decryption was important.

64. The Delegation of Senegal stated that the treaty be as clear as possible as to who and what was to be protected. The treaty should improve the situation of broadcasting organizations and, at the same time, be sensitive to the interests of rightholders. She noted that the interventions by the NGOs, who were directly involved in the business of broadcasting, had been extremely helpful.

65. The Delegation of Singapore posed the example in which a broadcast was simulcasted over cable, satellite and the Internet and asked which rights did the original broadcaster have in this scenario. The Committee might follow the lead established by the Rome Convention and the WPPT, or it might take a new direction.

66. The representative of the National Association of Broadcasters (NAB) referred to the example posed by the Delegation of Singapore, and suggested that one should look to the originator of the broadcast. The broadcaster who sent out the original signal must be entitled to protection not only for his or her simultaneous transmissions, but retransmissions by anybody else including retransmissions of retransmissions.

67. The representative of the International Federation of the Phonographic Industry (IFPI) stressed that the questions of who was protected, and what rights were granted, must be clearly resolved. What was most important was to determine what rights were necessary to fight piracy of broadcast signals.

68. The Chairman noted that several speakers had used the term “simulcasting,” which he suggested referred to the same signal carried by other means by the same operator.

69. The representative of the International Literary and Artistic Association (ALAI) stated that when a broadcaster simultaneously emitted his broadcast and a cablecast with the same content, according to the existing international provisions, the broadcast was protected while the cablecast was not. Therefore, at least some cablecasts should be protected in the new treaty for the benefit of the broadcasters. In that connection, the European proposal was very pertinent and any limitation to the kinds of cablecasts protected could be done by amending the provisions on the beneficiaries of protection. Maintaining the same definition of broadcasting would exclude the broadcasters from the market opportunities of webcasting.

70. The representative of the National Association of Commercial Broadcasters in Japan (NAB-Japan) stated that, in Japan, when a broadcaster transmitted by wireless means and by Internet simultaneously, he did not seek protection of the latter as the current protection did not include Internet transmissions, even if they were made by the same broadcaster. The same protection should be granted in the new instrument which should have the Rome Convention as a starting point.

71. The representative of the Association of Commercial Television in Europe (ACT) reminded the Committee that the definition of broadcasting was necessary to determine the

scope of protection of the beneficiaries of the treaty. That exercise should take into account the need for obtaining authorization from other stakeholders. In the case of streaming, for instance, there were two questions: the use of the stream signal that needed to be subjected to control by the broadcaster and the content of the stream signal that needed to be protected under a right of making available. The first question should be answered by the new instrument and the second by the existing treaties that protected other stakeholders.

72. The representative of the International Federation of Film Producers Associations (FIAPF) remarked that the object and beneficiaries of protection were decisive issues in the treaty. She noted that there was a confusion between the protection of the signal and the content. One had to be very careful when granting rights to broadcasters as they should not inhibit the exercise of other stakeholders' rights.

73. The representative of the Ibero-Latin-American Federation of Performers (FILAIIE) seconded the previous statement. Apart from the traditional transmissions, the concept of broadcasting should cover new technologies. However, it was necessary to take into account the current protection of the content by the existing treaties when introducing the new concept of broadcasting.

74. The Delegation of China believed that the concept of broadcasting was an important matter that would determine what and who should be protected. Some proposals and submissions, like those of Argentina and the African Group, offered a broad scope of protection while others were less broad. It was necessary, therefore, to harmonize those two positions. In that connection, the proposal of the European Community could be taken at the principle document for discussion. The existing definition of broadcasting in the Rome Convention was 40 years old, and a new definition adapted to the new technologies was therefore necessary. Moreover, in order to have a complete and clear understanding, other definitions should be added to the treaty, *inter alia*, transmission, rebroadcasting and retransmission.

75. The Delegation of Switzerland referred to the statement of ACT regarding the problems of having two different definitions for the single concept of broadcasting: one in the WPPT and the other in the new treaty. An explanation of the definition in the new treaty would perhaps be appropriate. That note could say that for the matter of content, reference should be made to the definition of the WPPT, and in that way the balance among the stakeholders would be eventually struck.

76. The Chairman drew up some provisional conclusions regarding the scope of protection that had to be borne in mind when establishing definitions. The first point on which convergence of opinions was found was, of course, the traditional broadcasting. Also, it seemed that operations of cablecasters that were similar to those of broadcasters should be under the protection. Transmissions over the Internet that were simultaneous with the broadcast with the same content and made by the same broadcaster should be also under the protection. In contrast, there was an understanding that any making available or on-demand operation as well as any retransmission by cable should be outside the scope of protection. There had been voices against the protection of retransmissions of broadcasts made by other operators, including retransmissions over the Web. He proposed that the Secretariat prepared, for the next session of the Standing Committee, a paper analyzing the different operations discussed so far. It would include traditional broadcasting, digital television, satellite and terrestrial networks, streaming, making available, conditions for reception and access by consumers, among other issues.

77. The Delegation of Andorra noted that the object of protection in the new treaty would be the signal. He asked if there were some countries that included in the definition of broadcasting something that went beyond the signal and covered also the content. If no country did so, then the solution was to include an explanatory note in the definition that made sure that content was out of the scope of the protection in the treaty.

78. The Chairman said that there was a clear distinction between the carrier or signal and the content itself. Certainly, the concept of broadcasting in the Rome Convention and the WPPT dealt with broadcasts that transmitted content.

79. The Delegation of Canada said that the notion of retransmission should cover any kind of retransmission, including such made over the Web. Establishing a protection against any particular kind of retransmission, however, could be a premature action.

80. The Chairman agreed with the previous statement. When discussing the rights, the Committee could identify some cases of retransmission outside the scope of protection of broadcasters' rights. Referring to document CRD/SCCR/6/1, he said that deferred transmissions should be included in the system of concepts but it was necessary to work first on the demarcation of the different kinds of retransmissions. The European and Swiss proposals included retransmission as a generic term, regardless of the means by which it took place. The Japanese proposal included retransmission over the air, the Argentine included the notion of cable distribution and the African countries included cable retransmission. He asked the Committee to see whether it was possible to establish a generic term of retransmission that embraced those made over the air, by cable, by wire, and perhaps via the Internet.

81. The Delegation of Japan said that its proposal included the notion of deferred rebroadcasting in addition to simultaneous rebroadcasting. Careful consideration was necessary when defining rebroadcasting as this could complicate the definitions. The Delegation raised the question as to whether the concept of "re-broadcasting" could cover re-re-broadcasting and its subsequent broadcasting. Rebroadcasting and retransmission were different terms. If a broadcasting organization transmitted the broadcast of another broadcasting organization, that act was considered rebroadcasting. If another person transmitted the broadcast of a broadcasting organization, that act was considered retransmission.

82. The Chairman asked the Delegation of Japan if the term "deferred broadcasting" in the definition of rebroadcasting in its proposal could cover the case when a broadcaster fixed the broadcast of another broadcasting organization and then broadcast on the basis of that fixation.

83. The Delegation of Japan answered that there were two cases of deferred broadcasting: when the same broadcasting organization fixed its own broadcast and rebroadcast it, and when a different broadcasting organization fixed the broadcast of another broadcasting organization and rebroadcast it.

84. The Chairman asked the Delegation of Japan if it found that the broadcast of a broadcasting organization, made on the basis of a fixation of a broadcast of another broadcasting organization, for instance a broadcast made the following day, was a new broadcast. If it was considered a new broadcast the effect would be the same in terms of the protection granted to the original broadcast.

85. The Delegation of Japan clarified that the right controlling the deferred broadcast was a right of the original broadcasting organization. The right of the other broadcasting organization was only in its own broadcasts.

86. The Delegation of the European Community said that what was established in the Rome Convention regarding rebroadcasting had been the starting point of its proposal. The proposal contained a generic term called “retransmission” that covered retransmission by wire, by wireless means, simultaneous and deferred retransmissions, and also retransmission made by another broadcasting organization or by any individuals. The proposal, therefore, put forward three Rome-plus elements: retransmissions by anyone; retransmissions by wire; and retransmissions based on fixations. The proposal did not use a separate term for retransmission or rebroadcasting.

87. The Delegation of Switzerland did not see any difference in the scope of protection of the European and the Swiss proposals. Maybe there was a different wording, but the effect was the same. Perhaps one could say that the Swiss proposal was more neutral and flexible since it was open to future technologies used by the broadcasters.

88. The Delegation of Argentina reiterated that Article 5 of its proposal referred to the right of retransmission in general. The purpose of mentioning the right to deferred transmission was to make sure that that kind of retransmission would also be protected. There was no big difference in that respect among the proposals presented in treaty language.

89. The Chairman agreed that there was no difference among the proposals, only the technique in establishing the protection. The European and Swiss proposals had no definitions, but protected retransmission through the operative clauses concerning the rights. The Japanese and Argentine proposals put forward some definitions, and in that respect the Japanese proposal was slightly different as it mentioned rebroadcasting over the air.

90. The Delegation of Japan said that it was necessary to consider the difference between “retransmission” and “communication to the public” as referred to in the WPPT.

91. The Chairman noted that the Japanese proposal included the twin notions of rebroadcasting and communication to the public of the broadcast. The latter was used in a much broader sense than in the other proposals. The notion of communication to the public in other proposals was limited to cases where broadcasts were made audible or visible to the public in a given place.

92. The representative of the National Association of Broadcasters (NAB) referred to broadcast retransmissions over the Internet, as a kind of retransmission that was a primary concern for broadcasters. There should be no restrictions on the right of rebroadcasting or retransmission, but if there were any, they should be included, preferably in the provisions related to the general limitations and exceptions that followed the three-step test.

93. The Delegation of Canada remarked that there were certain kinds of retransmission that should not be covered by the protection for broadcasters.

Communication to the Public

94. The Chairman said that the Japanese proposal to some extent followed the same notion of communication to the public as the Berne Convention. It considered as communication to the public transmissions made by any medium otherwise than by broadcasting. The other proposals used the notion of communication to the public in the sense of Article 11*bis*(1)(iii) of the Berne Convention which was making the broadcast audible or visible. There were some slight differences among the proposals of the latter group, particularly regarding the condition of payment of an entrance fee in the place where the broadcast was communicated to the public.

95. The representative of the European Broadcasting Union (EBU) stated that broadcasters were keen on having a broad right of communication to the public, without the restriction imposed by the Rome Convention of payment of an entrance fee. That restriction was due to the fact that at the moment of the adoption of that Convention, few people had a television set at home, but now, the reality was another. Business enterprises now installed large screens transmitting sports events to attract consumers to their bars and other establishments, without entrance fees and even inserted other advertisements for their own profit.

96. The representative of the International Federation of the Phonographic Industry (IFPI) expressed her organization's concerns that a broad right of communication to the public could be granted to broadcasting organizations. Standards of protection in favor of broadcasters required clarity and had to be limited to the fight against piracy. In particular, broadcasters should not be granted rights that would give them wider protection than that granted to performers and phonogram producers. The new instrument should not prejudice the rights of other categories of owners of related rights.

97. The Delegation of Switzerland referred to its proposal which included a broad right of communication to the public and did not require payment of an entrance fee. That exclusive right would cover any form of communication to the public. The Delegation did not share the concerns expressed by the observer from IFPI. The exclusive right would be justified if brought in line with the rights of other rightholders and it would be possible to submit such right to compulsory collective management.

98. The representative of the International Literary and Artistic Association (ALAI) agreed with the positions expressed by the Delegation of Switzerland and by the representative of IFPI. The restriction regarding access against payment contained in the Rome Convention was obsolete and had been drafted at a time where the economic and technological conditions were completely different.

99. The representative of the International Confederation of Societies of Authors and Composers (CISAC) urged the Standing Committee to be very cautious when expanding the boundaries of copyright. Since some broadcasters had not always respected their copyright and related rights obligations, it was questionable why they should be granted such new rights at the international level.

Fixation

100. The Chairman indicated that the next important issue to be examined was fixation: the definition contained in the WPPT could be considered a reference point. In view of the experiences from the WCT and WPPT, there was no need to further discuss that issue.

101. The Delegation of Senegal referred to the concept of fixation as it had been included in Article 7 of the Swiss proposal contained in Document SCCR/2/5 and requested further information.

102. The Delegation of Switzerland explained that the term “fixation” had not been defined, but its contents had been stated in a broad manner in connection with the granting of the right.

103. The Delegation of Andorra expressed concerns about the fixation right as it had been defined in the WPPT. What was discussed in the present case was the definition of a fixation of a signal, which was the embodiment of the signal and not the embodiment of sounds and images.

104. The Chairman pointed out the difficulty to draw a distinction between the carrier and the content, in particular in the case of fixation, as any person who fixed the broadcast, that was to say the signal, was also fixing the content of the signal that was carried. It should be clarified that a fixation here concerned the signal only and not the content that the signal was carrying.

105. The Delegation of Senegal found that an express reference to the concept of signal was necessary and that the sole reference to sounds and images was not sufficient to avoid confusion with respect to other instruments, such as the WPPT.

106. The Delegation of Argentina stated that the issue raised by the Delegation of Andorra was important although it had not thought about it when elaborating its submission contained in Document SCCR/3/4, which included a definition of the word fixation. Its Article 5 referred to broadcasting organizations enjoying exclusive rights concerning their emissions. Article 4 referred to fixations on a material medium. The rights granted would only have to cover emissions to overcome the disadvantage raised by the distinction between content and signal.

Signals Prior to Broadcasting/Program-Carrying Signals

107. The Chairman indicated that the notion of “program-carrying signal” was one of the notions that was suggested to be defined and could be found in particular in document SCCR/3/5, submitted by the Delegation of the United Republic of Tanzania, and in document SCCR/6/2, submitted by the European Community and its member States. The notion referred to any broadcast, since a broadcast was always a “program-carrying signal,” but not to broadcasting. One should ask whether all signals used for communication between two operators carrying content, stored and used for subsequent broadcasting, should get protection, or whether signals prior to broadcasting should be protected in situations where the broadcast would follow as an uninterrupted part of the chain of communication. The notion of “program-carrying signal” was first found in the Brussels Satellite Convention of 1974.

108. The Delegation of the European Community explained that it had been looking at the issue of signal theft and had come to the conclusion that it was necessary to make a distinction between broadcasting signals and other signals that were not broadcasting. In the case of signals prior to broadcasting, broadcasting would not have to follow immediately in an uninterrupted chain in order to be protected. These were signals, and not program-carrying or broadcasting, which could lead to broadcasting or deferred broadcasting. Footnote 2 of document SCCR/6/2 reflected that the circumstances in which such protection would apply could require further consideration. A distinction had to be made between signals carrying programs, which would be broadcasting, and other types of signals. The definition of “program-carrying signal” was integrated in Article 10 but there was no separate definition.

109. The Chairman noted that in the proposal of the European Community, the notion of “signal prior to broadcasting” was used for signals transporting program material point to point, and for signals that were not intended for direct reception by the general public.

110. The Delegation of Australia referred to some concerns expressed by broadcasters in cases where a broadcast was encrypted because it was intended only for reception in certain areas and not in others, and some drinking and eating establishments in the excluded areas managed to decrypt and receive and show the broadcast to their patrons. Such cases would have to be covered by the right under discussion.

111. The Chairman pointed out that in some national legislation signals prior to broadcasting part of an uninterrupted chain ending in a broadcast were considered part of and protected as the broadcasting. In many other countries, such signals would fall outside the scope of protected broadcasts. Such differences in the scope of protection would have to be taken into account.

Summary of definitions

112. The Chairman noted that there seemed to be general support for the inclusion, in the scope of protection, of the traditional form of “broadcasting”: the transmission by wireless means for public reception of sounds or of images and sound. If the object of protection was limited to wireless broadcasting, the traditional definition of “broadcasting” would be sufficient. If, however, some forms of wire transmission were also to be protected, one solution was to broaden the definition of “broadcasting” to embrace such transmission, as had been proposed by the European Community. Another solution was to maintain the traditional notion of “broadcasting” but to examine which forms of wire operations should be included as objects of protection. It had been pointed out that certain forms of wire transmission, in particular certain cable operations, should be covered. As to the subject matter to be protected, it was the carrier, the signal or the transmission, as opposed to the content. That should be spelled out clearly in the instrument to avoid any confusion in the future. As discussed, an analytical document which described the technological aspects of broadcasting would be prepared in order to clarify the notions.

Rights to be granted

113. The Chairman invited the Committee to discuss the rights to be granted, as described in document CRD/SCCR/6/2.

Right of retransmission

114. The Delegation of Canada reiterated its view that a comprehensive right of retransmission should not be granted. In respect of free over-the-air terrestrial broadcast, for instance, no right of cable retransmission should be granted. In respect of certain forms of broadcasting, however, there could be a right of retransmission. Encrypted signals were such an example. Further discussions with different stakeholders at the national level were planned before the next session of the Standing Committee. It should be noted, however, that if a right of retransmission was granted to broadcasters, they might enjoy higher protection than other categories of rightsholders who were not granted such an exclusive right. The right of retransmission for certain categories of rightsholders was reduced to a right to remuneration or a compulsory license in many countries.

115. The Chairman agreed that the balance among different categories of rightsholders should be borne in mind. It should also be noted that there were many reasons for organizing retransmissions.

116. The Delegation of Singapore asked why satellite broadcasting was not mentioned in document CRD/SCCR/6/2. Furthermore, he asked whether simultaneous transmission of signals through different media, such as over-the-air broadcasting, cable or the Internet, could be considered as the same original transmission, or whether only the over-the-air broadcasting was the original transmission and the other forms of transmission were retransmission of the original transmission. He also requested clarification of the case where the simultaneous transmission through different media was undertaken by a sister company of the main broadcasting organization.

117. The Chairman replied that satellite broadcasting was not mentioned in document CRD/SCCR/6/2 because satellite broadcasting could be embraced within the notion of "broadcasting." He suggested that retransmission should be confined to the transmission of the original transmission signal undertaken by another body. If the same body transmitted the signal via different channels or communication networks, all transmissions could be considered as original transmissions.

118. The Secretariat noted that what constituted "another body" was a question of corporate law, which was not harmonized under copyright and related rights and therefore left to national legislation.

119. The Delegation of Japan expressed its view that transmission over the Internet should be excluded from the scope of the right of retransmission, in that such transmission could be covered under the right of making available. Secondly it asked whether retransmission was limited to what was intended for reception by the public, or it also included the transmission intended for reception by any other entity including other broadcasting organizations. It might be more appropriate to grant a right limited to the retransmission to the public.

120. The Chairman said that the “public” could be interpreted in a broad sense. It could include not only private persons, but also other media enterprises for instance. That issue could be discussed further at a later stage.

121. The Delegation of Australia informed that questions pertaining to particular areas of retransmission were under internal debate in its country. With reference to the intervention of the Delegation of Japan, it questioned whether all forms of transmission over the Internet could be covered by the right of making available. Real time streaming of broadcasts might not be covered by such a right. Referring to the intervention by the Delegation of Canada concerning retransmission of free over-the-air broadcast, it questioned whether there were any cases in which free over-the-air broadcasts originating from a broadcaster operating in one country were intended to reach another country. In its country, there had been a broadcasting organization beaming broadcasts to other countries of the region, but in such a case the originating broadcasting organization might not object to the retransmission by other bodies because its objective seemed to be the wider reception of its programs in those countries.

122. The Delegation of Switzerland expressed its view that granting the right of retransmission to broadcasters did not result in jeopardizing the balance among different categories of rightsholders. The right of retransmission was included in the Rome Convention, and was a cornerstone in the fight against piracy. The proposals made by Switzerland and the European Community contained broad rights of retransmission. Authors could also enjoy the same rights with possible exceptions. Those exceptions could also be applied to the rights of broadcasting organizations.

123. The Delegation of the European Community stated that the intellectual property protection of broadcasters should extend to acts of retransmission, as reflected in Article 6 of its proposal. The term “retransmission” was not defined in the Rome Convention and should therefore be clarified. The scope of the right of retransmission in its proposal was confined to non-interactive transmission. Interactive transmission was covered by the right of making available under Article 7 of its proposal. In relation to the point raised by the Delegation of Singapore concerning the retransmission by a sister company, the Delegation was of the view that there was no need to specify who should refrain from the act of retransmission without authorization. Further, retransmission could include simultaneous transmission, depending on how the term “retransmission” was defined. In its proposal, retransmission covered both wire and wireless transmission, whether it was simultaneous or based on fixations. These were additional protection, compared to the Rome Convention.

124. The Delegation of Andorra underscored the importance to define the object of protection, whether it be the signal or the original broadcast. Technologies gave rise to many possibilities. The definition of “originating organization” in the Brussels Convention could provide useful guidance.

125. The Delegation of Japan, referring to the remark by the Delegation of Australia that real time streaming of a broadcast might not be covered by the right of making available, clarified that Article 7 of its proposal covered the act of making unfixed broadcasts available. The Delegation also said that the idea “access from a place and at a time individually chosen by them” in the WPPT should not necessarily mean that the public could receive programs from the beginning.

126. The Delegation of France emphasized the importance of maintaining the balance among the different categories of rightsholders. Referring to the remark made by the Delegation of

Switzerland that there was no danger of jeopardizing that balance, it pointed out that the issue should be further discussed. In respect of licensing of protected works and subject matter for broadcasting, there was a balance in the existing system. The differences between the exclusive right and the right to remuneration should be analyzed in view of the purpose of fighting piracy. The proposal of the European Community made it clear that the object of protection was the signal, as opposed to the content, in particular in the French version.

127. The Delegation of Argentina stated that in the legislation of its country, cable transmission of a broadcast was not covered by retransmission if such distribution took place simultaneously within the service area of the originating broadcaster. Article 6(4) of its proposal left the possibility of adopting such a scope of retransmission in the national legislation.

128. The Delegation of Switzerland stressed that maintaining the balance among different categories of rightsholders was of vital importance. What it meant was that granting exclusive rights to broadcasters would not necessarily jeopardize the balance. If the rights of other categories of rightsholders were reduced in the framework of exceptions, that should also apply to broadcasters.

129. The representative of the International Federation of Actors (FIA) noted that actors' performances were exploited around the world without compensation, and as such, they, like the broadcasting organizations, were also in need of international protection. His organization supported protecting broadcasters against piracy but felt that merely transmitting a signal should not qualify for extensive exclusive rights affecting content rightsholders. Any treaty updating the rights of broadcasting organizations should only be approached after the finalization of the treaty on audiovisual performances.

130. The representative of the Association of Commercial Television in Europe (ACT) referred to the intervention by the Delegation of Canada, and observed that the Rome Convention, in its Article 13, already contained a right of rebroadcasting. The right for a broadcasting organization to control the retransmission and rebroadcasting of its broadcasts was both fundamental and necessary to the success of its business operations.

131. The representative of the Canadian Cable Television Association (ACTC) reviewed the statutory scheme in Canada by which cable retransmitters were able to retransmit the programming carried by broadcast signals in consideration for statutory compensation to rightsholders. If broadcasters were granted exclusive retransmission rights under the treaty, cable operators would be forced to negotiate a new scheme for rights, and they would have to pay twice for the same product, i.e., for the signal and for the content and would have to pay twice for the content, i.e., once to rightsholders and once to broadcasters. Such additional compensation would benefit only the broadcasters. He urged the Committee to balance the interests of all stakeholders, so as to avoid the possibility of double payments.

132. The representative of the North American Broadcasters Association (NABA) said that compulsory licensing schemes were harmful to both broadcasters and content rightsholders. In a historical context, compulsory licensing was created in a time when there was limited content available for broadcasting, which was no longer the case, and there was no recognition of harm for broadcasters. In the twenty-first century, retransmission, including Internet retransmission, was a significant threat to broadcasters and content owners. The answer might lie in a closer examination of exceptions and limitations, and might take into account the three-step test contained in Article 9(2) of the Berne Convention. Internet

retransmissions were the biggest problem for broadcasters, but satellite retransmissions were also a danger. Referring to the intervention by the representative of ACTC, she said that no Canadian legislation required double payments from cable operators.

133. The representative of the International Association of Broadcasting (AIR) noted that the protection of audiovisual performances, as well as the rights of broadcasting organizations, were both issues at the Diplomatic Conference of 1996, and that each issue should proceed independently of the other. The right of retransmission was the most basic right of broadcasting organizations, and the worst piracy facing broadcasting organizations was in respect to the retransmission of their signals, which could, in addition, be viewed as a form of unfair competition. The fact that the right of rebroadcasting was embodied in the Rome Convention was evidence of the importance of such right.

134. The representative of the National Association of Commercial Broadcasters in Japan (NAB-Japan) referred to the proposal by the Delegation of Japan, and said that, with respect to the retransmission of a broadcast over the Internet, the Japanese proposal, through the right of making available to the public, offered the most effective means to combat this form of unauthorized retransmission because broadcasters need not verify whether or not transmission to the public occurred, and because such verification is quite difficult.

135. The representative of the National Association of Broadcasters (NAB) recalled the prior intervention by the Delegation of Switzerland, and said that the right of retransmission was the cornerstone in the edifice of protection for broadcasting organizations. Compulsory licensing was the basis of a problem in Canada concerning Internet retransmissions, i.e., that certain Internet providers in Canada had claimed that a compulsory license could be used to retransmit a broadcast worldwide on the Internet without authorization. The Committee should closely examine this issue. Compulsory licensing was created and applied to situations in which it was necessary to obtain rights from large numbers of rightholders and authors; this was not the situation with respect to broadcasters, which were limited in number. In this context, broadcasters were not in competition with authors and rightholders, but rather existed in a symbiotic relationship with them in which each party would be part of a win/win scenario. On the contrary, unauthorized retransmissions of broadcasts were done by competing broadcasting organizations, that is, their competitors, who thereby gained an unfair advantage. This was one important reason why the exclusive retransmission right was so critical to broadcasters. Radio and television broadcasters differed in that radio to a large extent relied on music content through phonograms; there was no exclusivity with respect to the content vis-à-vis a particular radio station. Television stations, on the other hand, were part of a “zone system,” in which, for example, a network or a syndicator would grant an exclusive geographical area for broadcasting of specific content. An unauthorized retransmission in the same zone would disrupt the scheme. Regarding the right of making available, this could cover a number of situations, including fixing and making available on-demand, and fixing and making available in so-called “near on-demand” (e.g., a particular show is broadcast on several channels with short timeshifts, enabling viewers to watch it almost when they wish), but not simultaneous transmission or retransmission.

136. The representative of the International Federation of the Phonographic Industry (IFPI) said that the proposals received by the Committee thus far were too broad and went way beyond the protection of the Rome Convention, which only covered simultaneous retransmission. An exclusive right for deferred retransmissions would provide a higher protection than what had been provided for the content. Her organization supported the prior interventions by Canada and France, as well as the prior intervention by the representative of

ACTC. She stressed the need to create balance in the treaty, and felt that giving exclusive new rights to broadcasters was not the correct path. Compulsory licensing did not work, and the main task of the Committee was to fight against piracy of broadcast signals.

137. The representative of the Asia Pacific Broadcasting Union (ABU) suggested that the Committee follow the definition of “broadcasting” as contained in the WPPT, but using the phrase “reception by the public” rather than “public reception.” There was no remedy provided by the Rome Convention for deferred retransmission, as well as for cable retransmission, the latter of which had become a crucial issue to broadcasters. The Rome Convention provided a right of communication to the public, but only if the public was charged a fee for entrance. Although there was a right of reproduction of fixations in the Rome Convention, there was no right of distribution of such reproductions. All those rights deficiencies needed updating in the new treaty.

138. The representative of the European Broadcasting Union (EBU) stated that fighting piracy provided a benefit to all rightholders, not just broadcasters. The retransmission right must be updated to include simultaneous as well as deferred retransmissions. Domestic legislation varied widely on the issues associated with broadcasters, but a new international treaty, including provisions for national treatment, would be greatly welcomed. The issue of unauthorized cable retransmissions required resolution.

139. The Chairman noted that the right of retransmission appeared to be a cornerstone of protection for broadcasters, and it should apply to any medium or manner of retransmission. The other cornerstone was the right of fixation. At the national level, there were many differences. He suggested that the Committee determine what were the boundaries of exclusivity relative to those two cornerstones, and what exceptions and limitations might be applicable thereto.

Other Rights

140. The Chairman invited the Standing Committee to discuss the remaining rights put forward in the different proposals: fixation, reproduction of fixations, distribution of fixations and making available. He suggested that the rights of fixation, reproduction and distribution would be the same rights as granted in the WPPT *mutatis mutandis*. No proposal included the right of rental, and if that right would be granted, the impact on other rightholders’ rights should be considered. The Delegation of Japan had recalled that the right of making available of fixed broadcasts might concern live transmissions. More discussion on that matter was necessary. The right of decryption or decoding had to be considered in conjunction with the obligations concerning technological measures of protection. Also, the right of communication to the public had already been discussed, but whether that right should be subject to a condition of an entrance fee had not been clarified yet. The protection of signals prior to broadcasting and program-carrying signals needed further discussion.

141. The Delegation of Senegal underscored that the balance among the different stakeholders had to be kept in mind. Existing copyrights and other related rights deserved full attention when drafting the rights for broadcasters.

142. The Chairman pointed out that the question of safeguard clauses was not under discussion at the moment, but it was, indeed, a matter to take into account during future discussions on the treaty.

143. The Delegation of Canada referred to the rights enumerated by the Chairman. Compared to the rights included in the Rome Convention, there were two changes: first, the rights in the Rome Convention were particular rights related to unauthorized fixations or fixations that had been made under exceptions with a subsequent different use; second, the particular rights in the treaty proposals would apply to authorized fixations. That second change would imply some complications, for instance, in the case of a fixation of a television program, as that fixation could result in an audiovisual work. It sought clarification on that possible overlap with copyright protection.

144. The Delegation of Algeria, speaking on behalf of the African Group, suggested a definition of “broadcasting,” which had been agreed on with the representatives of broadcasters.

“‘Broadcasting’ means the wireless transmission of sounds and/or images or representation thereof for reception by the public. It covers transmission by satellite and also encoded signals when means of decoding are provided to the public by the broadcasting organization or with its consent.”

The Group sought more clarification related to the right of communication to the public. The payment of an entrance fee as a condition to exercise the right of communication to the public should not be a determining factor. It also reiterated the importance of striking a balance among the different stakeholders when granting rights to broadcasters.

145. The Chairman noted that the definition of broadcasting given by the African group was similar to the definition in WPPT. The Committee had to solve a legal policy issue when considering how broadly the right of communication to the public should be drafted, particularly regarding the condition of payment of an entrance fee in public places.

146. The Delegation of Japan referred to the importance of the protection of pre-broadcasting signals. Such signals were not included in the scope of the protection of broadcasters as they were not actually transmitted to the public. The Delegation said that it might be a good idea to set some conditions to make the relationship between broadcasting signals and pre-broadcasting signals clear in order to protect pre-broadcasting signals under neighboring rights. It was also necessary to demarcate the protection of actual broadcasts and pre-broadcast signals. The Delegation recalled that there were other means to grant protection for those signals such as telecommunications legislation, an alternative also put forward in the European proposal.

147. The Delegation of Australia referred to the protection against unauthorized decryption and the provision on technological measures. If the latter was chosen as the alternative for protection, an appropriate adaptation of the wording of the provision would be necessary, because Article 18 of the WPPT was anchored in the rights granted. If decryption was undertaken to enable reception, which was not subject to a right for broadcasters, so the provision against unauthorized decryption had to be anchored somewhere else.

148. The Delegation of the Russian Federation supported the previous statement of the Delegation of Canada regarding the right of fixation and possible copyright and related rights in the fixations, enjoyed by the broadcasters who had produced the content. That had to be a matter for very careful consideration. The same applied to the protection of signals preceding broadcasting.

149. The Delegation of the European Community noted that its proposal granted a series of exclusive rights, that were also granted in the Rome Convention, and some new rights that responded to the digital environment. The right of communication to the public was subject to a condition of payment of an entrance fee in places accessible to the public. The alternative options that withdrew or maintained that condition needed to be studied carefully, because if the condition were withdrawn, or if a right of remuneration were granted instead, it would affect the balance among the stakeholders, including the users. The Delegation questioned whether that condition actually was outdated. Another aspect to take into account was the economic feasibility of the alternative options. Regarding signals prior to broadcasting the Delegation, for the moment, did not envisage a special protection through exclusive rights. More exploratory discussions with the private sector were needed to have a definitive position in that respect. The Delegation supported the inclusion of obligations of technological measures of protection in the new treaty.

150. The Delegation of China reiterated that, as others had pointed out, it was necessary to strike a balance among the different stakeholders when granting new rights to broadcasters. The precondition would be that copyright and related rights should not be less than the rights granted to broadcasters. In addition, the protection of signals prior to broadcasting needed further consideration. The protection of those signals could be based on other legislation or settled through other technical means.

151. The Delegation of Switzerland agreed that the problem of encryption and decryption of broadcasts could find a solution through different approaches. In the Swiss proposal the solution was an exclusive right of decryption, which was due to the fact that the obligations concerning technological measures of protection that were drafted along the lines of the relevant provision in the WPPT applied only where the technological measures related to the rights contained in the treaty. If the obligations regarding technological measures were adapted correctly and included the act of decryption, possibly an exclusive right of decryption might possibly not be necessary.

152. The Delegation of Andorra pointed out that according to the discussions, if a simultaneous retransmission was made by an entity other than the original broadcasting organization, the right of making available would be involved. If, however, the retransmission was originated by the original broadcasting organization, the act would be rebroadcasting and not making available. The Delegation sought clarification in that respect.

153. The Delegation of Egypt supported what had been said previously regarding the need to strike a balance among the copyrights, related rightsholders and broadcasting organizations. Also, it sought more verification regarding broadcasting organizations' rights to make available and to communicate to the public.

154. The Chairman reiterated that the balance between other rightholders' rights should be borne in mind for the new treaty as it was not only a legal but also a political issue.

Beneficiaries of protection and national treatment

155. The Chairman turned to the issues of beneficiaries of protection and national treatment. As to the beneficiaries of protection, there was a high level of convergence. The main criteria were the location of the headquarters of the broadcasting organization and the location of its transmitters. The proposal of the European Community put forward another criterion which

was based on a notification deposited to the Director General of WIPO. As to national treatment, there was also a high level of convergence among the proposals as four proposals foresaw national treatment regarding the rights specifically granted in the instrument. The clauses on beneficiaries of protection were in some proposals built on a definition of “nationals.”

156. The Delegation of the Russian Federation shared the opinion of the Delegation of the European Community and supported the provisions contained in Article 2(2). Such ideas would have to be expressed in a terminology close to the one used in Article 3(3) of the WPPT. It submitted to the International Bureau the following proposal concerning an additional paragraph to the Article on beneficiaries that read as follows:

“Any Contracting Party availing itself of the possibilities provided in Article 6(2) of the Rome Convention shall make a notification as foreseen in this provision to the Director General of the World Intellectual Property Organization.”

157. The Chairman noted that the Standing Committee would consider further the points of attachment for beneficiaries of protection and the clauses on national treatment on the basis of the proposals which were on the table.

158. The Delegation of Andorra drew attention to the notion of transmitter and asked how it could be understood in the framework of the Internet.

Exceptions and Limitations

159. The Chairman indicated that the proposals submitted by the various Delegations were built on the model of the WPPT. Contracting Parties would be allowed to provide for the same kind of exceptions and limitations as provided for the protection of artistic and literary works. Clauses on the three-step test had also been provided.

160. The Delegation of Canada recalled that, in addition to allowing the same limitations and exceptions which applied in relation to the protection of copyright in literary and artistic works, it had requested the inclusion of the limitations applicable to performances and phonograms.

161. The Chairman stated that further deliberations on exceptions and limitations could be based on the existing proposals.

Term of Protection

162. The Chairman noted that the issue had been addressed by five proposals and that all of them provided that the term of protection would not be less than 50 years counted from the end of the year, or the first of January of the following year, of the broadcast. There was an open question as to whether a repeat broadcast of the same program content should enjoy a new term of protection of its own. The issue would be discussed further at the next meeting of the SCCR. Non-governmental organizations were asked to provide further input on the issue.

Obligations Relating to Technological Measures, Rights Management Information

163. The Chairman suggested to base the provisions dealing with obligations relating to technological measures and rights management information on the provisions contained in the WPPT.

Reservations

164. The Chairman suggested to deal with reservations at a later stage.

Application in Time

165. The Chairman pointed out the high degree of convergence between the different proposals. The Standing Committee indicated its readiness to consider clauses on this issue on the basis of the existing proposals.

Enforcement

166. The Chairman stated that the WCT and WPPT would serve as a basis when discussing enforcement provisions.

Administrative and Final Clauses

167. The Chairman referred to the proposals submitted by Argentina (document SCCR/3/4) and the European Community and its member States (document SCCR/6/2) which dealt with the number of ratifications necessary for the entry into force of the future treaty and the possible links with other treaties. The majority of Delegations had expressed a preference in favor of a separate treaty and not a protocol.

168. The Delegation of the United States of America stressed that while it had not participated substantially in the discussions, it was actively considering the issue and was looking forward to consultations in its country with interested parties with the goal of trying to submit a contribution for the next session of the Committee.

169. The Delegation of India looked forward to the continuing progress of the Standing Committee on the issue. It appreciated the fact that the Secretariat would conduct a study on the issues raised by the protection of broadcasting organizations. Such analysis was also underway in its country and it was willing to cooperate with WIPO to carry out the study. It would also be ready to assist in the organization of seminars, in cooperation with WIPO, to reach better understanding on the issues involved.

OTHER ISSUES

170. The Secretariat informed the Standing Committee of some activities that were under way or planned. Firstly, he referred to the study on the protection of non-original databases which had been commissioned. A first draft by experts from different regions of the world would be submitted in the first half of January, and in late January the experts would meet in Geneva to discuss their methodology and findings. Final results were expected during the spring of 2002. Secondly, he referred to the interest expressed by many Member States for discussion on issues relevant to the implementation of the WCT and WPPT and on other issues which were not linked to treaty negotiation. If the Committee agreed, seminars on such issues would be organized in the framework of the next sessions of the SCCR. Finally, regional meetings on the protection of broadcasters would be organized, in cooperation with Member States willing to host such initiatives.

171. The Secretariat informed the Standing Committee that presently 28 countries were party to the WCT and 26 countries were party to the WPPT. It was expected that the additional two countries needed for the WCT to enter into force would ratify or accede to the Treaty in the very near future.

172. The Delegation of Singapore indicated that it would be very useful to hold meetings on matters of common interest, since the areas discussed were developing areas and that such practice would benefit the Standing Committee.

173. The Delegation of Bulgaria supported full use of the time available during the Standing Committee to discuss a number of additional issues.

174. The Delegation of Algeria, on behalf of the African Group, stressed its interest in the work developed in the Standing Committee. A number of issues required further consultation. It supported the organization of further consultation or information meetings in order to develop positions on the matters discussed. Authors' societies and broadcasters should also contribute to this process.

FUTURE WORK

175. The Standing Committee made the following decision:

A. Databases: the issue would be carried forward on the Agenda of the next meeting of the Standing Committee.

B. Rights of Broadcasters: (i) the issue would be the main point on the Agenda of the next meeting of the Standing Committee; (ii) the Governments and the European Community are invited to submit additional proposals on this issue, preferably in treaty language, to be received by the Secretariat on or before March 11, 2002; (iii) a technical background paper dealing with the issues

raised by broadcasters' rights protection would be prepared by the Secretariat; (iv) the next meeting of the SCCR would take place from May 13 to 17, 2002; (v) on the morning of May 13, 2002, regional consultations would be held in Geneva.

C. The SCCR took note that an information seminar on issues relevant to the implementation of the WCT and WPPT would be organized by the Secretariat in conjunction with the next meeting of the SCCR.

ADOPTION OF THE REPORT

176. The Standing Committee unanimously adopted this report.

177. The Delegation of Hungary stated that the Hungarian Parliament had adopted an amendment to the Hungarian Copyright Act, relating to the *sui generis* protection of databases. It would enter into force on the January 1, 2002.

178. The Delegation of the Dominican Republic stated that it supported the view of the International Association of Broadcasting (IAB) that the definition of "broadcasting" should remain as in the WPPT.

179. The Chairman closed the session.

[Annex follows]

ANNEXE/ANNEX

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

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(dans l'ordre alphabétique français/
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Asociación Internacional de Radiodifusión (AIR)/International Association of Broadcasting (IAB)

Andrés LERENA (Presidente, Comité Permanente de Derecho de Autor, Montevideo)

Association canadienne de télévision par câble (ACTC)/Canadian Cable Television Association (CCTA)

Gerald KERR-WILSON (Senior Counsel, Ottawa)

Association des avocats américains (ABA)/American Bar Association (ABA)

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

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