

WIPO



SCCR/12/4

ORIGINAL: English

DATE: March 1, 2005

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

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STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

Twelfth Session
Geneva, November 17 to 19, 2004

REPORT

adopted by the Committee

1. The Standing Committee on Copyright and Related Rights (hereinafter referred to as the “Standing Committee” or “SCCR”) held its twelfth session in Geneva from November 17 to 19, 2004.
2. The following Member States of WIPO and/or members of the Berne Union for the Protection of Literary and Artistic Works were represented in the meeting: Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belgium, Benin, Bhutan, Brazil, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Czech Republic, Denmark, Egypt, Dominican Republic, Democratic Republic of Congo, El Salvador, Finland, France, Germany, Ghana, Greece, Hungary, India, Indonesia, Islamic Republic of Iran, Italy, Japan, Jordan, Latvia, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Malta, Mexico, Morocco, Namibia, Nepal, New Zealand, Nigeria, Norway, Panama, Paraguay, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Senegal, Slovenia, Singapore, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, The Netherlands, The former Yugoslav Republic of Macedonia, Togo, Turkey, Uganda, Ukraine, United States of America, United Kingdom, Uruguay, Venezuela and Zambia (76).
3. The European Community (EC) participated in the meeting in a member capacity.
4. The following intergovernmental organizations took part in the meeting in the capacity of observers: International Labour Office (ILO), United Nations Educational, Scientific and

Cultural Organization (UNESCO), World Health Organization (WHO), World Meteorological Organization (WMO), World Trade Organization (WTO), and South Centre (6).

5. The following non-governmental organizations took part in the meeting as observers: Alfa-Redi, American Bar Association (ABA), Arab Broadcasting Unios (ASBU), Asia-Pacific Broadcasting Union (ABU), *Asociación Argentina de Intérpretes* (AADI), Association of Commercial Television in Europe (ACT), Association of European Performers' Organization (AEPO), Association of European Radios (AER), Brazilian Association of Broadcasting (ABERT), British Copyright Council, Canadian Cable Television Association (CCTA), Caribbean Broadcasting Union (CBU), Center for International Environmental Law (CIEL), Center for Performers' Rights Adminsitratio (CPRA), Central and Eastern European Copyrights Aliance (CEECA), Civil Society Coalition (CSC), Co-ordination Council of Audiovisual Archives Associations (CCAAA), Copyright Research and Information Center (CRIC), Digital Media Association (DIMA), European Digital Rights (EDRI), Electronic Frontier Foundation (EFF), 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 GEIE), Ibero-Latin-American Federation of Performers (FILAIE), Independent Film and Television Alliance (IFTA), International Association of Audio-Visual Writers and Directors (AIDAA), International Association of Broadcasting (IAB), International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), International Confederation of Societies of Authors and Composers (CISAC), International Federation of Film Producers Associations (FIAPF), International Federation of Horseracing Authorities (IFHA), International Intellectual Property Alliane (IIPA), IP Justice, International Federation of Actors (FIA), International Federation of Associations of Film Distributors (FIAD), International Federation of Journalists (IFJ), International Federation of Library Associations and Institutions (IFLA), International Federation of Musicians (FIM), International Federation of the Phonographic Industry (IFPI), International Federation of Reproduction Rights Organizations (IFRRO), International Music Managers Forum (IMMF), International Publishers Association (IPA), International Video Federation (IVF), Japan Council of Performers Organizations, Licensing Executives Society (LES), Max-Planck-Institute for Intellectual Property, Competition and Tax Law (MPI), National Association of Broadcasters (NAB), National Association of Commercial Broadcasters in Japan (NAB-Japan), North American Broadcasters Association (NABA), Radio and Television Supreme Council, Union for the Public Domain, Union of National Broadcasting in Africa (URTNA), Union Network International–Media and Entertainment International (UNI-MEI) and World Blind Union (WBU) (55).

6. The session was opened by Mrs. Rita Hayes, Deputy Director General, who welcomed the participants on behalf of Dr. Kamil Idris, Director General of the World Intellectual Property Organization (WIPO).

ELECTION OF OFFICERS

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

ADOPTION OF THE AGENDA

8. The Chairman referred to the Draft Agenda (document SCCR/12/1) and the decision of the eleventh session of the SCCR to consider the protection of broadcasting organizations the main item on the Agenda. Concerning the proposal by the Government of Chile (document SCCR/12/3), requesting the inclusion of an item regarding certain limitations and exceptions on the Agenda, and a change in the order of items in such a way that the latter would be discussed before embarking upon the deliberations on the protection of broadcasting organizations, the Chairman proposed that the Agenda remain the same but, exceptionally, the Committee devoted one hour on the first day of the session and a maximum of two hours at its end for the presentation and discussion of the above-mentioned proposal.

9. Responding to a request from the Delegation of Zambia for clarification regarding the splitting of discussions of items on the Agenda, the Chairman explained that, as an exception, a debate on the proposal of Chile would be opened for one hour before discussing the item on the protection of broadcasting organizations, as there was a delegation with special needs that could only attend the first day of the session.

10. With this modification, the Standing Committee adopted its Agenda, as contained in document SCCR/12/1. The Chairman invited the Delegation of Chile to present document SCCR/12/3.

OTHER ISSUES FOR REVIEW

11. The Delegation of Chile referred to its proposal in document SCCR/12/3 and pointed out that, almost a decade ago, the international community had recognized the rights of creators and cultural industries to exploit works and other protected material in the digital environment. New technologies presented new opportunities to facilitate access to education, culture and knowledge for the general public, particularly for the most vulnerable groups in society. For that purpose, specific limitations and exceptions needed to be established in the public interest, while maintaining a balance with other stakeholders' rights. That need had been put forward during the 32nd General Conference of UNESCO. The lack of regulation and harmonization of limitations and exceptions at international level made difficult any initiative for the benefit of the above mentioned people which had to be a social priority, particularly in developing countries. Therefore the proposal referred to public libraries, handicapped people and distance education. As regards public libraries, the creation and development of digital public libraries, services and archives in the information society, as well as the promotion of cooperation among those institutions seemed to be impossible without certain copyright exceptions. The freedom of lending, particularly at international level, to facilitate the legitimate use of works by patrons, was indispensable. As to handicapped people, such as those suffering from visual, aural or intellectual impairments, the lack or shortage of information material in appropriate formats for those persons could hamper the exercise of essential rights of access to culture and education. Finally, as regards distance education, little national legislation contained exceptions concerning distance

educational activities with the use of digital means, including digital networks. The development of digital educational webportals largely depended on harmonization of the right of quotation and appropriate limitations for educational purposes. The Delegation referred to the studies, documents and activities prepared and organized by the International Bureau in 2002 and 2003, particularly the WIPO Study on Limitations and Exceptions of Copyright and Related Rights in the Digital Environment, prepared by Professor Sam Ricketson, and the Information Meeting on Digital Content for the Visually Impaired, which took place on November 3, 2003. It also referred to document SCCR/8/2, a Short Description of Possible Subjects for Future Review by the Standing Committee, where the issue of limitations and exceptions had been expressly included. However, the Delegation considered that it was necessary to go further and to prioritize the work of the SCCR to open a space to discuss limitations and exceptions specifically for the aforesaid beneficiaries, with a view to facilitating understanding on that issue and in order to learn from successful examples at national level in order to make progress towards achieving consensus on minimum international standards.

12. The Delegation of India supported the proposal of Chile. The idea was not to give a blanket exception, but to discuss the nature and scope of certain limitations and exceptions. The matter deserved to be discussed in the SCCR.

13. The Delegation of Argentina expressed the need to strengthen a deep understanding at international level of limitations and exceptions to copyright and related rights, particularly regarding the needs of developing countries, rather than dealing with the subject merely as an exercise of interpretation of international norms. It also highlighted the need to exchange experiences and information on the issue in the SCCR.

14. The Delegation of Paraguay expressed its sympathy and support for the proposal of Chile. The copyright exceptions for the visually impaired, including those permitting the conversion of protected material into accessible formats, such as Braille, were of extreme importance for many developing countries, as well as those referring to distance education and public libraries.

15. The Delegation of the Syrian Arab Republic noted that the proposal of Chile referred to an issue that was not new in the international debate on copyright and related rights. It welcomed the continuation of discussions on the issue of limitations and exceptions in future sessions of the SCCR, taking into consideration the needs of developing countries.

16. The Delegation of Uruguay stated that it was open to discuss the issue of limitations and exceptions as proposed by the Delegation of Chile. It was a sensitive issue that deserved broad debate.

17. The Delegation of the Islamic Republic of Iran supported the proposal of the Delegation of Chile and hoped that delegations would discuss the issue with a positive approach.

18. The Delegation of Brazil noted that the proposal presented by the Delegation of Chile was very interesting and supported discussions along the lines proposed.

19. The Delegation of Egypt welcomed the proposal made the Delegation of Chile and stated that the discussion on copyright exceptions for the three categories of beneficiaries mentioned in it was of great importance. It recalled that during the Information Meeting on

Digital Content for the Visually Impaired in November 2003 some proposals regarding exceptions for visually impaired had been put forward.

20. The Delegation of Costa Rica supported the proposal made by the Delegation of Chile and stated that its Government was very sensitive to the issue of copyright exceptions. The exchange of information on experiences, analysis and studies was very valuable.
21. The Delegation of Algeria welcomed the Chilean proposal, and sought clarification from the Delegation of Chile concerning whether the objective of the proposal was to reexamine the existing norms in international treaties or to assess their application.
22. The Delegation of the Dominican Republic noted that the proposal made by the Delegation of Chile addressed a sensitive issue for developing countries. It supported the idea of including the item in the Agenda of the SCCR.
23. The Delegation of Senegal thanked the Delegation of Chile for its proposal, and stated that numerous delegations shared the wish to consider the issue of limitations and exceptions during the discussions of the SCCR. It asked the Delegation of Chile whether the proposal envisaged a mere declaration of principles or the adoption of an international instrument on the matter.
24. The Delegation of Bangladesh stated that it was reasonable to consider the issue of limitations and exceptions as a separate item of the Agenda. It expressed the need to incorporate developing countries' concerns into WIPO's activities, as well as to safeguard the interests of consumers and the public at large in those countries. It was necessary to initiate a discussion on a minimum mandatory set of limitations and exceptions.
25. The Delegation of Morocco asked the Delegation of Chile whether the purpose of the proposal was to modify the international standards already agreed upon, including those in the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).
26. The Delegation of China pointed out that the issue of limitations and exceptions was an old and controversial one. Article 27 of the United Nations Declaration of Human Rights stated that everyone had the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits, but the declaration also enshrined the right of authors to protection of the moral and material interests resulting from their scientific, literary or artistic production. That legal standard should be the basis for any international treaty on copyright and related rights protection and its exceptions. A new question was raised by the advent of new technologies, on how to strike the balance among the different interests when works and other protected material were exploited in the digital environment. In that respect, it referred to the revision of the Copyright Law of its country that had taken place in 2001, where the right of making available to the public had been granted, but the relevant limitations had yet to be established through separate regulations which had not been approved. Finally, it pointed out that one important question was how to address the issue proposed by the Delegation of Chile, as an item of the Agenda of the SCCR or as an issue to be dealt with in a separate meeting.
27. The Delegation of Jordan stated that the proposal made by the Delegation of Chile needed careful consideration in order to avoid any misunderstanding regarding the protection

of copyright and related rights and their limits. It referred to the fact that people with other disabilities might also benefit from exceptions similar to those for the visually impaired.

28. The Delegation of Chile explained that the purpose of the proposal in question was to find a formula that permitted all the countries to exercise minimum exceptions relating to the visually impaired, public library institutions and distance education. It said that the idea was to know the experiences of the members of the international community. The Delegation stated that it was a major step forward for the issue to be debated in the SCCR.

29. The representative of the United Nations Educational, Scientific and Cultural Organization (UNESCO) identified the issues proposed by the Delegation of Chile as very important and sensitive. She referred to the importance of protecting rights to access information and striking a fair balance with copyright and related rights protection. In that respect, in order to facilitate an understanding on the matter, UNESCO had undertaken a number of initiatives, including the preparation of a study on the nature and scope of limitations and exceptions to copyright and neighboring rights by Lucie Guibault. She noted that the WIPO study prepared by Professor Ricketson on Limitations and Exceptions of Copyright and Related Rights in the Digital Environment was also a very important contribution, and recognized WIPO as the best platform to open a debate on the issues proposed by the Delegation of Chile. She pointed out the importance of defining clearly the format and objectives of the discussion, as well as the issues to be discussed. As regards the latter, she tentatively remarked that exchange of information and best practices regarding practical implementation of the three-step test and information concerning cases in national courts, may be one of the important points to address. Finally, she stated that UNESCO was ready to collaborate with the International Bureau of WIPO in the process that would be pursued.

30. The representative of the World Blind Union (WBU) stated the proposal by the Delegation of Chile was motivated by a concern to ensure fairness. All delegations believed that authors and creative industries should be protected, but restrictive copyright laws could hamper the development of culture and education and could work against the interests of the society. He commended the number of WIPO initiatives that supported the aspirations of blind and partially sighted people in the field of copyright, already mentioned by preceding delegates, including the new model provision for the visually impaired in the WIPO Draft Copyright Law, the preparation of a study that targeted the issue of digital rights management and the needs of the visually impaired and distance education, and a study on national exceptions for the visually impaired. He believed that the issue of copyright exceptions for the visually impaired along with other issues proposed would benefit from greater momentum and priority within the SCCR deliberations in a very proactive rather than reactive way. A level of harmonization on the above legal exceptions needed to be achieved, in order to facilitate international transfer of copyrighted material that had been modified in order to be accessible by the visually impaired. Such harmonization would be of great benefit to developing countries, whose content production sometimes was relatively small. Finally, he stated that there were many alternative ways that the issues proposed could be tackled. Some of those would be that WIPO provided technical advice or organized training sessions on the matter, among others.

31. The representative from the International Publishers Association (IPA) pointed out that his Organization represented 78 national, regional and specialized publishers associations in 66 countries, including associations from Chile, India, Argentina, Egypt, Brazil and many other countries represented in the SCCR. It believed in striking a fair balance between the

interests of rightsholders and users. Publishers and their associations agreed with many member States' views that the issue of limitations and exceptions was very sensitive. However, the key issue was the cooperation of stakeholders to achieve acceptable solutions. In many countries, publishers' associations had been working with education officials, library representatives and groups of disabled persons to find practical and flexible solutions. Mutual understanding and cooperation had led to practical, forward-looking solutions. IPA welcomed the clarification made by the Delegation of Chile that its proposal was not aimed at modifying the current body of international treaties. He recalled the attempt of the European Union to harmonize copyright exceptions, including the particular exceptions proposed by the Delegation of Chile. That exercise had involved an enormous amount of effort on all sides and had resulted in little more than a listing of national exceptions and, actually, few countries had substantially changed their exceptions. A repetition of that exercise could not be seen as a worthwhile task. That weak outcome had been achieved between countries that were relatively aligned economically and, at least, partly shared a joint history and culture. It was inconceivable that even such a low level of harmonization could be achieved at international level, among countries with even greater variety in economic strength, cultural heritage, historic background, cultural industries and intellectual property infrastructure. Soft copyright laws would probably harm international publishers, but it certainly would kill local publishing that served local needs. Exceptions were about balancing the needs of all stakeholders based on the local context, local traditions and local infrastructure. He welcomed an exchange of information under the understanding that it would be impossible to harmonize these areas internationally, due to different and often challenging circumstances, and that the focus should not be on weakening copyright but promoting cooperation and understanding.

PROTECTION OF BROADCASTING ORGANIZATIONS

32. The Chairman opened the floor on the issue of the protection of broadcasting organizations. The General Assembly had requested that the SCCR accelerate its work on the protection of broadcasting organizations. Since the last session of the Standing Committee another working document had been distributed, namely the Revised Consolidated Text for a Treaty on the Protection of Broadcasting Organizations, document SCCR/12/2. That document was based on written proposals presented by Delegations. All changes had been indicated in the text, and every additional element had been indicated with broken underlining. As agreed in the June 2004 session of the SCCR, items having received limited support had been put in square brackets and underlined. On the basis of written proposals, new alternatives had been added in regard to the term of protection. On the basis of the debates, comments had been included in the explanatory notes. As regards acts that followed initial fixation, a test draft to demonstrate another possible solution had also been added in footnotes to Articles 9, 10, 11 and 12. In many places a final paragraph had been added in the explanatory notes, to indicate areas where a clear majority was in favor of one or another alternative. Those indications were made for descriptive purposes only and were non-binding.

33. The Delegation of Uruguay supported concluding a treaty on the protection of broadcasting organizations as soon as possible. Its country had taken part very actively in the process, and had presented a proposal at the second session of the SCCR which aimed at updating the protection of broadcasting organizations. Over the years the Standing Committee had made significant progress, and the Revised Consolidated Text was a sound basis for discussions in the Committee. As regards webcasting, it would be more convenient

to examine it after adopting a treaty on traditional broadcasting so the updating of protection would not be further delayed and resources not diverted from the main objective.

34. The Delegation of Algeria stressed that significant progress had been made in the SCCR. It was important to reiterate that the scope of protection for a possible treaty should not cover webcasting and that it should respect the rights of authors and performers.

35. The Delegation of Egypt, speaking on behalf of the Group of African countries, supported updating of the protection of broadcasting organizations. The African Group favored balanced protection that took into account the interests of all stakeholders, and in particular the larger public interest. Such protection must support public policy objectives of African countries, such as access to knowledge and the dissemination of information. The African Group supported a scope of protection that covered, in priority, signals, and was confined to traditional broadcasting organizations. In the Revised Consolidated Text there were still important areas where it was necessary to further narrow differences, especially as regards the scope of protection and the nature of rights to be given to broadcasting organizations. The Delegation hoped that the SCCR would fulfill the mandate of the General Assembly as regards accelerating the work and making further progress on the protection of broadcasting organizations. It also stressed the need to take into account the development dimension and the needs and concerns of developing countries. There was an important technological and material gap between broadcasting organizations in developing countries and those in the developed world. It was necessary to integrate that reality into the discussions in order to reach agreements that could command wide acceptance and adherence.

36. The Delegation of Brazil took the floor on behalf of the Group of Co-sponsors of the “Proposal to establish a Development Agenda for the World Intellectual Property Organization”. Development concerns must be incorporated into all activities of WIPO, including norm-setting, and specifically in the work of the SCCR on the issue of the protection of broadcasting organizations. Intellectual property was not an end in itself, nor could the harmonization of intellectual property laws lead to higher protection standards in all countries, irrespective of their levels of development. Action was needed in order to ensure that costs did not outweigh the benefits of IP protection. New norms in the field of copyright and related rights could have a serious impact on development and social policies of countries in several crucial areas, so it was necessary to take on board the interests of consumers and the public at large. Adding new layers of intellectual property protection to the digital environment could seriously obstruct the free flow of information and scuttle efforts to set up new arrangements for promoting innovation and creativity, through initiatives such as the “Creative Commons”. In that regard, the Group was greatly concerned by the ongoing controversy surrounding the issue of technological protection measures in the digital environment.

37. The Delegation of India had expressed its concerns with the proposed new treaty in past sessions of the SCCR. Nonetheless its country had taken heed of the General Assembly’s urging to accelerate work on the protection of broadcasting organizations. To that end its Government had held consultations with all stakeholders, as a result of which it was made clear that several issues had to be resolved both domestically and at the international level before convening a diplomatic conference. It was necessary to further narrow differences to avoid a result similar to that of the Diplomatic Conference of December 2000. The development implications of a broadcasters’ treaty should be taken into account in areas such as education and health.

38. The Delegation of the Islamic Republic of Iran stated that, as expressed in the Preamble to the Revised Consolidated Text, the protection of broadcasters should not compromise the rights of other rightholders. The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention) offered an appropriate model to deal with the balance between different right holders. Access to information and the public interest were important concerns for Iran. It was necessary to put aside the elements that had received limited support, such as webcasting. The final clauses in the Consolidated Text needed revision. An approach of encouraging WIPO Member States to be a party without subject to any other treaty should be emphasized in the Consolidated Text under discussion.

39. The Delegation of Morocco stressed the importance of updating the protection of traditional broadcasting organizations after seven years of analysis, and following the urging of the General Assembly. It endorsed the comments of the Egyptian delegation on behalf of the African countries. It was important that protection took into account the interests of all stakeholders in a balanced manner. The scope of protection merited special attention and was an area, among others, where it was possible to take consensual measures to accelerate the process.

40. The Delegation of Serbia and Montenegro, speaking on behalf of the Regional Group of Central European and Baltic Member States, stressed its will to achieve a treaty on the protection of broadcasting organizations. Substantial progress had been made and it was necessary for the SCCR to assess whether that progress was sufficient and whether divergence of views had been narrowed enough to have a successful diplomatic conference.

41. The Delegation of Mexico stressed the importance of the Committee's work on the protection of broadcasting organizations. Although other issues, such as the protection of audiovisual performances, were of extreme importance, it was necessary at present to focus attention on the broadcasting issue in order not to divert the necessary efforts to attain a successful result.

42. The Delegation of the European Community and its Member States stressed its attachment to the process leading to updating the protection of broadcasting organizations. It stated that two issues stood in the way of conclusion of a treaty. First, the scope of application, where there seemed to be a growing consensus that transmissions by wire, including by cable, should be covered by the new Instrument. It was logical, in the current digital environment, to give protection to broadcasting organizations for the simultaneous and unchanged webcasting by them of their own broadcasts. Second, the nature of the rights accorded to broadcasting organizations should be in line with the Rome Convention, which granted to them rights of an exclusive nature. The protection of broadcasters by means of exclusive rights had been well established at European Union level since 1992, and a level of protection limited to a right of prohibition would be a major step backwards. A new international treaty should not be limited to updating the Rome Convention, but should also contain sufficient Rome-plus elements. The "à la carte" solution proposed in footnotes to Articles 9, 10, 11 and 12 would enable each party to adopt protection of a different nature, but it would raise the important issue of the interplay between different systems and could give way to questions whether material reciprocity principles would also be needed.

43. The Delegation of Ukraine stated that, as regards the scope of application, the provisions in Article 3 that covered organizations in charge of cable transmission offered a sound basis for a final solution. As regards Article 24, Eligibility to become Party to the

Treaty, Alternative B, which did not require being party to the WIPO Internet Treaties in order to become party to the new treaty, offered a solid basis for reaching consensus.

44. The Delegation of Japan regretted that the last General Assembly had not decided to convene a diplomatic conference on the protection of broadcasting organizations. The proposed treaty had fundamental significance for the adequate protection of broadcasting organizations, the balance and coordination of interests among various right holders, and for anti-piracy measures. From the standpoint of balance, it was important to adopt a treaty on the protection of broadcasting organizations. It was important to maintain the momentum and accelerate the discussion on outstanding issues so that a decision could be taken soon on convening a diplomatic conference.

45. The Delegation of Senegal stated that the new Revised Consolidated Text put delegations in a better position to update the protection of broadcasting organizations. There were a few difficulties ahead that were not insurmountable, and there was hope to move speedily towards a diplomatic conference, which should adopt a treaty solidly based on the Rome Convention.

46. The Delegation of Bangladesh indicated that in its country broadcasters enjoyed a reproduction right in respect of their broadcasts which lasted for 25 years. At present Bangladesh was engaged in a process of legal reform to adapt the rights of broadcasters to the new technological environment. At the international level, it took the view that webcasting should be excluded from discussions on the scope of protection.

47. The Delegation of New Zealand stated that it was apparent from the Revised Consolidated Text that there was a high degree of consensus on most of the issues covered, and there were very few substantive issues on which there remained a meaningful division of opinion. As had been noted on many occasions, review of the rights of broadcasters had been on the table for many years. As determined by the Rome Convention, the rights of broadcasters were proper subject matter for copyright and neighboring right protection. With the rapid progress of technology, there was a need to update protection that had been previously granted. Under New Zealand copyright legislation, broadcasts and cable programs received the same level of protection as literary, artistic, musical and dramatic works. Significant protection was also provided for performers, including audiovisual performers. The Delegation was not aware of any conflict between broadcasters' rights and rights in underlying content or the rights of performers, which had previously been signaled by other delegations. Its Government had undertaken a review of the implications of digital technology for the copyright system, with a view to increasing the responsiveness of copyright to the new technological challenges. Following that process, a decision had been taken to replace the technology-specific protection for broadcasts and cablecasts with technology-neutral protection of communication works, which would include both broadcasts and cablecasts. There seemed to be little disagreement within the Committee that "cablecasting" should be covered by an updated treaty. There remained significant opposition to the inclusion of "webcasting". The Internet had created many challenges for copyright systems around the world. At the international level, however, it was perhaps prudent to clarify and update the rights of traditional broadcasters and cablecasters, a matter long outstanding, and deal with webcasting at a later stage so that further discussions could be undertaken on that technology. There was no doubt that webcasting was an important issue that should be dealt with as a matter of priority in the Committee's future work program. Undoubtedly, in setting minimum standards States should be able to retain sufficient flexibility to develop solutions and mechanisms appropriate to their own unique

characteristics and circumstances. As a small nation, that was something of which New Zealand was acutely aware. Nevertheless, all countries had an interest in ensuring that they had a flourishing and successful broadcasting industry, through which it could develop and share its own cultural and artistic life. The Committee could make a meaningful contribution towards that goal.

48. The Delegation of Norway commended the excellent presentation by Professor Lucas on the transfer of rights of audiovisual performers, and hoped that such analysis and further considerations at the national level would result in substantial progress in order to finalize an international agreement on the protection of audiovisual performances. The Delegation reiterated its firm support for updating the protection of broadcasting organizations, which should concentrate on the needs of traditional broadcasting.

49. The Delegation of the United States of America stated that the Revised Consolidated Text offered solid ground for a speedy convening of a diplomatic conference on the protection of broadcasting organizations. Promoting the communication of information to the public by all technological means was a goal that benefited both developed and developing countries. Protecting the intellectual property and other legitimate interests of such communicators created a crucial incentive for dissemination of and for providing access to information. It was necessary to take into account the progress of technology and therefore to include webcasting in the scope of protection of the proposed treaty. There was no reason to exclude one category of public communicator by reason of the technological means by which the communication took place.

50. The Delegation of the Russian Federation indicated that the Revised Consolidated Text was a sound basis for achieving progress on the protection of broadcasting organizations. The scope of protection should not cover webcasting. Moreover it supported the protection of pre-broadcast signals. The Delegation stated that encrypted signals were included in the provision on technological measures of protection. Finally, it expressed its opposition to requiring membership of the 1996 WIPO Internet Treaties in order to join the possible new treaty.

51. The Delegation of Colombia signaled that the Revised Consolidated Text offered a solid basis for making progress on the important issue of updating the protection of broadcasting organizations. Webcasting was an important issue in the present technological environment. At the international level, however, it was perhaps premature to deal with it at present. It would be better to address that issue at a later stage and concentrate now on more traditional issues. Moreover, regulation of webcasting could imply the necessity of dealing with the status and government regulation of webcasters, which greatly differed from those of traditional broadcasters. As regards limitations and exceptions and technological protection measures, it was advisable to follow the model of the WPPT.

52. The Delegation of Zambia supported the statement made on behalf of the African Group by the Delegation of Egypt. Other positive statements had been made by other delegations and they would provide a strong basis for the Committee's final conclusions. With a view to solving the remaining outstanding issues, it was necessary to clear, if not all issues, then at least three of them. That could be accomplished in regional meetings outside Geneva as soon as February 2005. The Decision of the General Assembly which requested the SCCR to accelerate its work had to be abided by. Strong flexibility and leadership were required from all delegates to accelerate the work. Most of the countries in Africa were in the process of fully taking advantage of the basic benefits of IP, but the agreement had to provide equal

benefits to all parties. The role and importance of new technologies, such as webcasting and simulcasting, was fully understood in some countries, but in Africa those issues were not ripe for legislation and it would be counterproductive to anticipate how those technologies would develop. Therefore, the Delegation could not support the inclusion of any of those alternatives in the treaty as further information and awareness were necessary. Broadcasting was the most important means for sharing cultural patrimony, and was a motor of social, economic and cultural development, and the moving forward of the process towards a positive conclusion was therefore fully supported.

53. The Delegation of China stated that the Revised Consolidated Text offered substantial flexibility and would provide a good basis for promoting the discussion. The text also took into account the interests of the general public. It was necessary to increase common consensus on the open points and to seek solutions in the common interest of all parties. Although 11 previous sessions of the SCCR had already addressed the issue of the protection of broadcasting organizations and the need to update the Rome Convention, divergences were for the time being greater than the degree of consensus in some respects. The scope of the treaty had to be extended to cablecasters since that activity had developed all over the world including China and could be compared to traditional broadcasting. The protection of webcasting raised some concern; the priority should be to regulate the behavior of webcasting organizations, since webcasters' rights had impinged on the rights of content owners. The issue had to be left aside, or, at least, the protection should not be made mandatory. The issue could be dealt with at a later stage. The nature of the rights to be granted under the new treaty had also to be clarified. China was not a member of the Rome Convention, but the model of that Convention and its built-in flexibility had to be taken as a basis. WPPT provisions on the protection of technological measures could not be used without further discussion. Due account also had to be taken of the international protection of audiovisual performers.

54. The Delegation of Togo stated that the Revised Consolidated Text would serve as a useful basis for moving the process forward as well as achieving an appropriate balance of rights between all stakeholders. The protection of program-carrying signals could be supported, whereas the protection of webcasting organizations required further study since it was an emerging activity in developing countries. It would be premature to legislate without knowing the full implications of that activity. As had been requested by the General Assembly, the time had come to accelerate work with a view to granting more effective protection to broadcasting organizations against signal piracy. Discussions had shown that there was a certain degree of convergence on the contents of the treaty. The remaining outstanding issues could be resolved either in the course of the present session, or in the course of the next rounds prior to the convening of the diplomatic conference or even during the conference itself. Developing countries were showing extraordinary growth rates in their broadcasting sector. As broadcasting played a major role in the development of cultural activities and for the development of countries, effective protection was required. At the present stage, the Committee should convene regional consultations and set dates for those consultations in view of achieving further agreement.

55. The Delegation of Kenya supported the statements made by the Delegation of Egypt on behalf of the African Group and of the Delegation of Brazil concerning the Development Agenda. A proposal had been submitted in treaty language, negotiations had dragged on for over seven years and it was critical to avoid celebrating a decade of discussions. Positive progress had to be registered at the end of the present session, to facilitate conclusion of an international instrument on the protection of conventional broadcasting organizations.

56. The Delegation of Australia recalled that national legislation in its country already provided for most of the Rome-plus protection elements proposed in the draft treaty text. While reserving its position on the treaty, the Delegation offered the following views. Any right of showing broadcasts in public had to be subject to the reservation that could be found in the Rome Convention. The nature of protection of pre-broadcast signals required further reflection. Assimilation of webcasters to broadcasters raised some concerns. Broadcasters were licensed in Australia and as such they had public obligations under existing regulations. As previous speakers had noted, webcasters in many countries were not subject to the same obligations that were imposed on broadcasters. Therefore, protection of webcasters required further and separate consideration. The Delegation was ready to contribute to any separate discussions on the issue.

57. The Delegation of Argentina expressed support for an agreement that would stop signal piracy.

58. The Delegation of Nigeria supported the work of the Committee, which reflected an evolutionary process, as well as the statement made on behalf of the African Group. A positive final outcome that would reflect the interests of all parties was required.

59. The Delegation of Azerbaijan stated that the Revised Consolidated Text was a well-balanced document that should be used as the basis for adopting the treaty. A reasonable balance governing the rights of broadcasting organizations and the interests of the public at large was reflected in that document, and had to be taken as a basis for the new international instrument.

60. The Chairman proposed a working program for the session. Great willingness had been expressed by the large majority of delegations for making progress in the discussions. The objective of the session was to look at all alternatives in the Revised Consolidated Text with the exception of national treatment, which should only be addressed at the end of the process, and to ask delegations whether they could agree to removal of alternatives proposed by them. Alternatives that had received limited support would be put in square brackets. The provisions on webcasting and on certain technological measures were already in square brackets. The process had to be flexible and non-binding. No definitive positions would be adopted, all delegations would have the possibility to make additional formal proposals where necessary. All delegations could be asked to delete or modify their proposals, and all reservations would be taken into account. The work program would be divided into four groups of issues. The first would address areas less politically sensitive in nature, such as Article 16, Alternative V, Article 4 on beneficiaries and Article 14 on limitations and exceptions. The second package would address Article 1 on the relation to other treaties, Article 24 on the eligibility rules, and Article 16 on technological measures. The third package would address rights in respect of acts taking place after fixation, including Articles 9, 10, 11 and 12, and the structure of such rights. The term of protection would be included in the third package as well as Article 7 on the right of communication to the public. The fourth package would address Article 15 on the term of protection, Article 7 on the right of communication to the public, and Articles 2 and 3 on definitions and scope.

61. The Delegation of Morocco requested clarification on whether the Committee would examine the Revised Consolidated Text article-by-article, or whether the Chairman would be presenting delegates with a group of articles on which views would be requested.

Clarification was also requested on whether the articles that had received support would be merged to form a temporary draft while the others would be set aside.

62. The Chairman explained that the intention was to look only at those articles contained alternatives based on different written proposals of governments, with a view to eliminating some of those alternatives. The next version of the Revised Consolidated Text would take into account the results of that process. Articles would be dealt with one by one, with the exception of Articles 9, 10, 11 and 12. The first item discussed would be Article 16(2) on technological protection measures, where two alternatives had been submitted.

63. The Delegation of Brazil recalled that at the previous session it had proposed the deletion of the entire Article 16, and that proposal should have been included as an alternative in the Revised Consolidated Text. It was concerned about the Chairman's approach asking which alternative could be supported by government delegations. The more fundamental question at the present stage was whether Article 16 should be included in the treaty at all.

64. The Chairman indicated that the Brazilian proposal would be addressed at a later stage in the discussions.

65. Recalling that the Delegation of Brazil had mentioned its opposition to the proposed Article, the Delegation of India thought that it would have been included as an alternative in the Revised Consolidated Text. There should have been two alternatives in paragraph (1) and one of them should have been the no-provision solution, in order for it to be discussed in the first round of discussions.

66. The Chairman explained that all aspects that were found in the written proposals had been included in the articles, whereas suggestions only made orally were reflected in the explanatory comments. That approach, however, could be changed, if questioned.

67. The Delegation of the Russian Federation supported inclusion of Article 16 as well as Alternative V, since the first paragraph created broad possibilities under national legislation for using effective technological measures of protection, whereas the second paragraph set out the minimum agreed by the Contracting Parties.

68. The Chairman indicated that paragraph (1) of Article 16, that stemmed from the WPPT, should form the basis for discussion on that Article.

69. The Delegation of Argentina stated that no delegation had opposed Alternative V, and that it had even received some support. If any delegation opposed that Alternative, the Delegation would be willing to listen to the reasons for such position, but it could give no flexibility on Alternative V without additional instructions and without knowing the general context of the adoption of that Article in the framework of the negotiating process.

70. The Chairman indicated that Alternative V could be maintained in square brackets in the next version of the Consolidated Text, depending on the support it would get from other delegations.

71. The Delegation of Switzerland stated that it was not in a position to give a final answer regarding the alternative solution, but it was in favor of inclusion of a provision on technological measures. The issue at stake was how the provision should be drafted.

72. The Chairman indicated that the Committee would now address Article 4 on beneficiaries and asked whether the Committee could agree to delete paragraph (3), which had been submitted by the European Community and its Member States. The objective of that provision was to narrow the scope of protection granted to broadcasters by submitting the protection to certain points of attachment, either the location of the transmitter or of the broadcaster's headquarters.

73. The Delegation of the European Community indicated that the proposal reflected the situation under the Rome Convention, and eight Member States of the European Community had made use of the provision under Article 6(2) of the Rome Convention. The Delegation would consider the possibility of deleting such provision after consultation with its member States. The provision could be needed to reflect the legal situation in the European context.

74. The Delegation of Russia was of the view that Alternative H was subject to the relevant drafting of Article 6(2) of the Rome Convention. The rejection of Article 6(2) would require a reservation from Contracting Parties stating they would not make use of that Article. Member States wanting to adhere to the new treaty would have to withdraw their reservation under the Rome Convention.

75. The Delegation of the United States of America indicated that its proposal in Article 14 reflected the domestic legislation of its country. However, it was possible that the proposed exceptions might be covered by application of the three-step-test instead. If there would be an understanding on that issue, the Delegation might agree that the proposal be deleted. It was a question that perhaps needed further reflection.

76. The Delegation of Egypt was keen to preserve Alternative T, a grandfathering clause permitting Contracting Parties to maintain certain limitations and exceptions relating to retransmissions. That Alternative corresponded to the domestic legislation of its country. More time was needed to consider that issue, and the Delegation asked that the Alternative be retained in the next Revised Consolidated Text.

77. The Chairman stated that, in view of the two preceding statements, Alternative T should be kept in the next edition of the Consolidated Text. He asked the Delegations of Chile and the Russian Federation whether they had any specific views in that respect.

78. The Delegation of Chile proposed that the exceptions in Article 15 of the Rome Convention be included in Article 14 as regards public retransmissions.

79. The Chairman clarified that the new instrument under discussion should not affect existing treaties. The obligations and rights in the latter would necessarily continue intact.

80. The Delegation of Chile indicated that Article 14 should include a specific obligation for Contracting Parties to provide the exceptions included in the Rome Convention.

81. The Delegation of the Russian Federation indicated that Alternative T created equal conditions for those Contracting Parties that had already introduced limitations and exceptions regarding the protection of broadcasters, compared to those that did not have any exception in that respect. There was a need to create an uniform situation for all Parties through the application of the three-step-test.

82. The Chairman indicated that no changes would be introduced in the text of Article 14.

83. The Delegation of Argentina requested that explanatory note 14.01 of the Revised Consolidated Text be maintained in the next version.
84. The Delegation of Mexico believed that paragraph (1) of Article 14 should be kept in the next version of the Revised Consolidated Text, including the wording “and the protection of related rights”.
85. The Chairman introduced the second group of questions. It encompassed Article 1 (Relation to other Treaties), Article 24 (Eligibility for Becoming Party) and Article 16 (Obligations concerning Technological Measures). Regarding the first, the Chairman asked whether deliberations could be based on Alternative B which was an all-treaties embracing alternative, that was to say, an alternative that included the Rome Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement), the WCT and WPPT, the Satellites Convention, among others. In that respect, the Chairman also asked whether Alternative A could be deleted, and whether Alternative B could read: “Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under any other multilateral, regional or bilateral treaty addressing copyright and related rights.”
86. The Delegation of Senegal pointed out that the African Group considered Alternative B the most appropriate, as it concerned all existing treaties that protected copyright and related rights.
87. The Chairman indicated that the Committee could decide whether further guarantees for other rightholders were necessary to add under Article 1.
88. The Delegation of the Russian Federation supported Alternative B.
89. The Delegation of the European Community indicated that, following a coordination meeting of its Member States, it was not in a position to express flexibility with regard to alternatives in Article 1.
90. The Delegation of Egypt, on behalf of the African Group, supported Alternative B.
91. The Delegation of Morocco supported Alternative B.
92. The Delegation of the Syrian Arab Republic supported Alternative B.
93. The Delegation of Colombia supported Alternative A because it safeguarded existing protection granted in treaties such as the 1996 Internet Treaties and the Rome Convention.
94. The Chairman clarified that Alternative A was a Rome Convention-safeguard only, and did not refer to other treaties. Alternative B, in substance, covered Alternative A plus additional protection granted in other treaties.
95. The Delegation of Colombia sought clarification regarding the inclusion of paragraphs (2) and (3) of Article 1 in Alternative A.
96. The Chairman answered that paragraphs (2) and (3) of Article 1 would be kept in the final text, no matter which Alternative was chosen regarding paragraph (1).

97. The Delegation of Colombia confirmed that it supported Alternative A.

98. The Delegation of India supported Alternative A as it specifically mentioned the obligations that Contracting Parties had in relation to the Rome Convention, while Alternative B was much more open and vague. It also expressed some misgivings about paragraph (3) of Article 1, as any treaty that was adopted would likely prejudice the existing rights under other treaties. In that respect, limitations and exceptions recognized in the Rome Convention could be affected if different rules were adopted under the new treaty.

99. The Chairman, referring to the question posed by the Delegation of Colombia, stated that Article 1 consisted of three paragraphs, and the only issue under discussion was paragraph (1). The scope of Alternative A was narrower than the scope of Alternative B. The first was a Rome Convention-safeguard option, and the latter offered an all-treaties safeguard. Paragraphs (2) and (3) had their background in the WCT and WPPT, and emphasized the self-standing nature of the new instrument. An alternative that affected existing obligations and rights under other treaties would be difficult to accept by those delegations from countries which had adopted those treaties, mainly due to constitutional reasons.

100. The Delegation of Ukraine pointed out that although it had previously supported Alternative A, after consultations it had come to the view that Alternative B was more effective and logical. It therefore supported that Alternative.

101. The Delegation of Australia suggested that Alternative B be phrased in such a way that the new instrument would not affect the Rome Convention, nor any other treaties.

102. The Chairman indicated that explanatory note 1.04 gave a full presentation of Alternative B. The text of that explanatory note might be inserted in Alternative B if delegations wished to do so. The Chairman clarified that he was trying to include a broad safeguard clause in the new instrument through Alternative B, without expressing opposition to Alternative A.

103. The Delegation of Mexico was in favor Alternative B as it granted clear protection to other rightholders, apart from being consistent with the national legislation of its country.

104. The Delegation of Togo supported Alternative B. It recalled that there were many States that were not party to the Rome Convention, so Alternative B guaranteed that all countries that adopted the new instrument would respect the existing rules encompassed in other treaties.

105. The Delegation of Chile shared the concern expressed by the Delegation of India regarding Alternative B. It suggested that Alternative B also refer to rights and read as follows: “Nothing in this Treaty shall derogate from existing obligations and rights that Contracting Parties...”

106. The Chairman pointed out that it would be necessary to check if there were actually rights in the treaties and not only obligations.

107. The Delegation of India said that it was not clear whether there could be conflicts among the obligations in different treaties. A country could have obligations with respect to more than one treaty, and those obligations could be overlapping, but never in conflict. The

reasoning given to support Alternative B was meaningless. The real problem was under paragraph (3) of Article 1, as it referred to rights accorded to rightsholders under other treaties that could not be abridged by the new instrument.

108. The Chairman said that the objective of paragraph (3) was to indicate that the new instrument would deal with the rights of broadcasters and would not touch the subject matter of other treaties that dealt with holders of rights in the underlying content. The Chairman noted that everybody agreed with what had been stated by the Delegation of India regarding paragraph (3).

109. The Delegation of the Islamic Republic of Iran supported Alternative B, and reserved its position regarding technical comments on Article 1.

110. The Delegation of Sudan supported Alternative B. In addition, it stated that the proposal of Chile on limitations and exceptions merited the full attention of the SCCR.

111. The Chairman pointed out that no conclusion could be drawn with respect to Article 1 until certain delegations indicated their flexibility to move towards Alternative B. If so, Alternative A could be placed in square brackets in the next version of the Consolidated Text. The Chairman referred to the remaining questions in Group 2 of issues. In respect of Article 24 (Eligibility for Becoming Party), he asked whether Alternative AA could be deleted, and Alternative Z could be selected instead. He also asked if Article 16 (Obligations concerning Technological Measures) could be maintained instead of being deleted as the Delegation of Brazil had proposed (explanatory comment 16.07). The questions in Group 3 referred to the rights regarding acts after fixation, namely, Article 9 (Right of Reproduction), Article 10 (Right of Distribution), Article 11 (Right of Transmission Following Fixation) and Article 12 (Right of Making Available of Fixed Broadcasts). The Chairman suggested introduction of a two-tier level of protection, as indicated in the footnotes in the Consolidated Text. As regards the questions in Group 4, the Chairman asked if Alternative DD of Article 15 (Term of Protection) that proposed 50 years of protection could be selected, and if Alternative EE that proposed 20 years could be deleted. With regard to Article 7 (Right of Communication to the Public), the Chairman asked whether deletion of the whole Article would be acceptable to the Committee, without prejudicing existing obligations acquired by countries party to the Rome Convention. Finally, regarding Article 2 (Definitions) and Article 3 (Scope), the Chairman asked whether Alternatives C, E and F could be deleted, and Alternatives D and G could be selected implying that no provisions on webcasting would be addressed in the new instrument. The other question was whether those delegations that did not agree to include webcasting in the treaty would allow others to confer protection on webcasters among themselves.

112. The Chairman opened the floor on question number 5, Article 24, Eligibility for Becoming Party to the Treaty.

113. The Delegation of Brazil asked when the NGOs present in the room would be permitted to intervene on substantive issues. Accredited NGOs represented a wide range of interests, including copyright owners and civil society, and they should be given the floor after each cluster of issues in order to have a comprehensive debate. On the issue of the documentation made available by NGOs outside the room, the Delegation was concerned and disturbed that documents made available by public interest representatives had been removed and even found in the trash bins of the rest rooms. The Delegation requested that the International

Bureau ensure that documents put forward by NGOs were properly made available outside the room and that the situation described before would not happen again.

114. The Delegation of India expressed alarm at the information provided by the Delegation of Brazil. In a democratic setting it was crucial to receive information from all perspectives before arriving at a decision, a process that appeared thwarted by the behavior described by the Brazilian Delegation. The Delegation of India supported the proposal from Brazil that NGOs intervene after each cluster of issues, in order to assist delegates to form their opinions on the different issues.

115. The Chairman noted that WIPO security prevented access to the premises by persons not accredited to the meeting, so it was apparent that responsibility for the actions denounced by the Brazilian delegate lay with some participants in the meeting.

116. The Secretariat stated that the table outside the hall was provided for distribution of documents to all delegates. The action denounced by the Brazilian delegate had been duly noted by the Secretariat, which would make efforts to prevent such actions from recurring. It was important for all delegates to observe the rules of the Standing Committee, so that all delegates would be able to benefit from as much information as possible.

117. The Delegation of Algeria reproved and condemned the acts denounced by the Delegation of Brazil.

118. The Delegation of Senegal supported the expression of concern by the Brazilian Delegation. While it appreciated the views of NGOs representing both right owners and users, it was necessary to follow the procedures in order to save time by leaving NGO interventions to follow those of government delegates.

119. The Delegation of New Zealand supported the views expressed by the Delegations of Algeria and Senegal. There was no doubt about the importance of interventions by NGOs but, in order to continue the progress that was taking place, it was appropriate to give priority to interventions by government representatives.

120. The Chairman proposed to complete the round of interventions on substance by Government representatives. The sooner that debate ended the sooner NGOs would be given the floor. He opened the floor on Article 24, Eligibility for Becoming Party to the Treaty, and offered introductory remarks. Alternative Z was a formula used in all WIPO treaties. Alternative AA made eligibility for accession to the proposed Treaty conditional on being party to the WIPO Internet Treaties. The open formula in Alternative Z had received an overwhelming majority of support from Member States, so consideration should be given to the need to select it and delete Alternative AA.

121. The Delegation of Egypt, on behalf of the African Group, supported Alternative Z in Article 24, as there should be no restriction on WIPO Member States regarding eligibility for becoming party to the new treaty.

122. The Delegation of the United States of America was not in a position to withdraw its support for Alternative AA, as it addressed potential conflict between the protection of content owners and the protection of right owners. Alternative AA found precedent in Article 24 of the Rome Convention, which tied accession to the Rome Convention to membership of the Universal Copyright Convention or the Berne Convention. That aimed to

ensure that the rights of authors, performers and producers were not adversely affected by new protection for broadcasters, and was also consistent with the tradition that rights accorded to neighboring right owners did not exceed those granted to authors.

123. The Delegation of Congo supported the position of the African Group in favor of Alternative Z.

124. The Delegation of Mexico supported Alternative Z and considered that adoption of Alternative AA would be detrimental to the entry into force of the treaty, jeopardizing the protection of broadcasting organizations.

125. The Delegation of the Islamic Republic of Iran supported Alternative Z and expressed its view that Alternative AA was against freedom of determination of States and contrary to what was suggested in Article 1, Alternative B, paragraph (3).

126. The Delegation of Syria supported Alternative Z.

127. The Delegation of Zambia requested flexibility from the Delegations of the European Community and its member States.

128. The Delegation of the European Community expressed support for Alternative Z. By the time a new treaty would be adopted, the condition set up in Alternative AA would be less important, as membership of the WIPO Internet Treaties would have greatly increased. In order to show flexibility, the Delegation was ready to reassess Alternative B of Article 1, regarding the Relation to other Conventions and Treaties. However, before taking a final view on that matter it would consult its legal experts, especially as regards the effect of using a model different from the WPPT.

129. The Legal Counsel of WIPO stated that past practice had been to make accession to a treaty conditional on membership of the Paris or Berne Conventions, depending on whether its subject matter was related to industrial property or copyright. Recent practice, however, had been to refrain from setting any such condition other than that of membership of WIPO. The current number of Member States party to the WCT was 48 and 45 for the WPPT.

130. The Chairman asked whether the European Commission also sought clarification of the relation between the obligations and rights for a given Party to one treaty over another, and proposed that the WIPO Legal Counsel respond to that issue on the following day.

131. The Delegation of Morocco supported Alternative Z as expressed by the Delegation of Egypt on behalf of the African Group. WIPO Member States should not be deprived of the benefit of becoming party to the new treaty, especially as some of them, which might not fulfil other requirements of membership, had actively taken part in discussions for the protection of broadcasting organizations.

132. The Delegation of India recognized the validity of the argument made by the United States of America. Alternative Z amounted to providing additional intellectual property rights to broadcasting organizations to the potential detriment of content owners.

133. The Chairman stated that the objective of avoiding the grant of intellectual property rights to broadcasting organizations, to the detriment of content owners, was shared by all delegations and that only the means to reach that objective remained under discussion.

134. The Chairman noted that the Delegation of Brazil had proposed the deletion of all of Article 16, for reasons set out in paragraph 16.07.

135. The Delegation of Switzerland expressed its support for Article 16. The protection of technological measures should be based on the treaty language found in the WPPT. Alternative W seemed to be generally favored, and the Delegation could abandon its support for Alternative V

136. The Delegation of Senegal insisted on the importance of Article 16 which was an essential Article constituting the very structure of the protection that broadcasters were asking for. It would be difficult to contemplate a broadcast protection treaty that did not include a provision on technological protection measures.

137. The Delegation of Chile recognized the usefulness of technological protection measures for protecting authors' rights and related rights, but pointed out that the application of past treaties with similar provisions had given rise to problems regarding the use of works in the public domain and had also affected the legitimate use of protected works. Such measures should not unduly affect the public domain. For that reason the Delegation supported the proposal of the Delegation of Brazil not to include Article 16.

138. The Delegation of Zambia stated that since its understanding was that the language of Article 16(1) was similar to that found in the WPPT, a compromise solution could be found by maintaining that paragraph and also the language of Article 16(2).

139. The Delegation of Syria supported the statement made by the Delegation of Brazil and stressed that access to information was a very important issue for its country.

140. The Delegation of India informed the Committee that its country was engaged in intensive consultations involving all levels of government and stakeholders regarding that issue. The Article had been of great concern, but there was recognition that with the evolution of technology the implications of protection of technological measures would have to be examined. The need to protect the public domain was also important. Article 18 of the WPPT raised a similar set of concerns. The harm to the public domain could be less important in the case of Article 18 of the WPPT than in the case of Article 16(1) where the potential harm was probably much greater. There was a need for provisions on that issue, but the Delegation was still in the process of examining all the implications, and it was not in a position to take any position at the present stage.

141. The Delegation of Algeria expressed its support for Article 16 as a useful tool in the fight against illicit use of broadcasts.

142. The Delegation of Iran informed the committee that the different dimensions of this treaty remain unclear for the country and added that consultations had been taken. Iran will maintain its reservations until the final outcome becomes known.

143. The Delegation of Morocco attached great importance to the protection of technological measures and was of the opinion that Article 16 should be maintained. The lack of such protection in a new instrument would endanger much of the protection that was sought. The Article was also in line with the national legislation of its country.

144. The Delegation of the Russian Federation supported the inclusion of Article 16, but was also open to discuss a possible redrafting of the Article.

145. The Chairman indicated that the next issue to be addressed dealt with rights in acts that take place after fixation. Those rights were included in Articles 9, 10, 11 and 12 of the Revised Consolidated Text. Exclusive rights to authorize and prohibit, similar in nature to the rights provided under the Berne Convention and the WPPT, had been proposed by the large majority of delegations. A second alternative was reflected in the proposals submitted by Egypt and by the United States of America, based only on rights to prohibit. A third possible model, based on a two-tier level of protection, had been suggested in footnotes in the Revised Consolidated Text. Both exclusive rights to authorize and rights to prohibit would be recognized, and countries would have the possibility to choose between the two options. That flexibility could accommodate all Member States. Countries opting for the higher level of protection by providing both rights to authorize and prohibit would not have the obligation to grant both types of rights to broadcasters of countries recognizing only the lower level of protection, but would, rather, provide the same level of protection as the countries providing only the lower level.

146. The Delegation of Switzerland asked what would be the harmonization effect of the two-tier approach and indicated its concern about that approach.

147. The Delegation of the Russian Federation supported the proposal for two-tier protection, and was of the view that consensus could be achieved on that proposal.

148. The Delegation of Chile stated it could not express any definitive position on that issue and was also contemplating the possibility of providing only a right of remuneration to broadcasters.

149. The Chairman was of the view that there was no relation between an exclusive right to prohibit and a right of remuneration. When consent was given for a specific use, then agreed conditions would apply that could include a possible remuneration. A right to prohibit would give the broadcaster the possibility to obtain judicial decisions against illicit use of the broadcast in order to stop that use. No connection existed between that use and rights of remuneration found in other treaties, such as Article 12 of the Rome Convention. Those rights operated on different layers and did not interfere with each other.

150. The Delegation of Zambia was of the opinion that a solution could be achieved concerning those Articles. The two-tier approach offered a very significant basis for compromise, allowing all countries to maintain their legal systems in place. Progress had to be made, and delegations had to be asked whether they could follow that approach.

151. The Delegation of Canada expressed its interest in the two-tier approach, but would further scrutinize its impact on the private sector. A more definitive position would be expressed at a later stage.

152. The Delegation of New Zealand stated it had no final position, but the national legislation of its country granted to broadcasters the same level of exclusive rights as for literary and artistic works, sound recordings and films, and that had not caused any problems. Consistency with the rights provided for holders of neighboring rights under the Rome Convention and the WPPT had to be maintained. Departure from that approach should not occur unless good reasons could be put forward, and that was not the case.

153. The Delegation of Brazil stated it had not reached a definitive position on the four proposed Articles and would reserve its position until the next session, as well as the right to submit alternative language not yet contained in the Revised Consolidated Text.

154. The Delegation of the United States of America explained that the two-tier approach was intended to address many delegations' concerns over the protection under the proposed treaty and the protection of the rights of creators and other rightholders. The difference between its own approach and the one contained in the footnotes was not important. However, the footnote approach could lead to further complexity regarding the obligations under the treaty. Alternative S would leave countries free to provide a higher level of protection for those rights, and under such an approach the only obligation would be to provide a right to prohibit.

155. The Chairman opened discussion on Article 15 on the term of protection. Alternative EE had been added following the proposal submitted by the Delegation of Singapore.

156. The Delegation of Singapore confirmed its position in relation to that issue, but it had not expected the issue to be controversial. The proposal was based on the Rome Convention, but Contracting Parties should be able to provide for a longer term of protection for broadcasts, as was the case in its country where the legislation provided a 50-year term of protection.

157. The Delegation of India supported the proposal made by the Delegation of Singapore. There was a relationship between the term of protection and the object of protection. The WPPT dealt with content, and so it tracked the practice for copyright. It was more relevant to base the term of protection on the Rome Convention than on the WPPT.

158. The Delegation of the Arab Republic of Syria supported the proposal submitted by the Delegation of Singapore.

159. The Delegation of Chile supported the statement made by the Delegation of Singapore, in particular because the beneficiaries of protection had not yet been defined.

160. The Delegation of Mexico supported Alternative DD, granting 50 years of protection.

161. The Delegation of Argentina maintained its position as described in its proposal contained in document SCCR/3/4.

162. The Delegation of Morocco supported the term of protection included in the Rome Convention.

163. The Delegation of Brazil asked that the two Alternatives be kept in the Revised Consolidated Text. No final position could be reached, and all alternatives had their merits.

164. The Chairman confirmed that the two Alternatives would be kept in the Revised Consolidated Text for further consideration.

165. The Delegation of Togo supported the position expressed by Singapore and indicated that the provision should be studied further.

166. The Chairman opened the discussion on Article 7 of the Consolidated Text, relating to the right of communication to the public and suggested the deletion of the Article.

167. The Delegation of Switzerland requested further clarification on the reasons for the proposal to delete that Article. The issue was still important in the present environment, not only for broadcasts, but also in the case of downloading from the Internet. It would be premature to delete the whole Article and the Delegation reserved its position on the Chairman's proposal.

168. The Chairman clarified that the Article was not relevant to the downloading of material from the Internet. It addressed cases of communication where broadcasts were received in public places against payment of an entrance fee. It had nothing to do with the broad concept of communication to the public that could be found in the Swiss or Spanish legislation, for example. It specifically dealt with the making audible or visible of broadcasts for members of the public present in a place where a receiving television set would allow people to watch a broadcast against payment of an entrance fee to get access to that place. It addressed a very specific case of communication to the public that was out of date in the new technological environment, and that was why the deletion of the entire Article had been proposed.

169. The Delegation of Australia stated that if Article 7 was maintained in the new treaty it would require a right of reservation to be included as in Article 16 of the Rome Convention. It could support the deletion of Article 7.

170. The Chairman stressed that the inclusion of a right of reservation would not be Rome-minus. The provisions of the Rome Convention would still be binding between the countries party to that Convention. Article 7 would be maintained in the new Revised Consolidated Text.

171. The Delegation of Senegal confirmed that Article 13 of the Rome Convention had been very rarely applied. However, the Delegation asked for the Article to be retained with the possibility of improving its drafting. It noted that during the last Olympic Games, broadcasters that had paid large fees for the transmission of the sports events complained against hotels that were showing the programs in the hotel halls without requesting an entrance fee from the audience.

172. The Delegation of Argentina indicated that the Article had to be maintained.

173. The Chairman opened the discussion on Article 2 relating to definitions and Article 3 relating to the scope of the treaty. The inclusion of webcasting in the core treaty would block any meaningful progress in the discussions, as there was no support for it. During the last two meetings, growing interest had been expressed in considering separate protection for webcasting. The Delegation of Japan had submitted a Communication on the issue, contained in document SCCR/9/9, and had suggested dealing with the possible protection of webcasting under an international instrument at a later stage, after careful analysis had taken place. Only one Delegation had proposed the inclusion of webcasting in the scope of the new treaty and that proposal had received very little support. The European Community and its Member States had proposed to include in the scope simulcasting, which would cover a broadcaster broadcasting simultaneously over the air and on the Internet. Some delegations had suggested that webcasting should be protected separately, possibly in an annex or in an independent instrument. Webcasting and simulcasting had already been placed in square brackets in the

Revised Consolidated Text. However, a solution had to be found and at the present stage that issue was the most important topic for discussion. The elements relating to the protection of webcasting had to disappear from the body of the text, in order to satisfy the large majority of delegations that were opposed to and feared the effects of that protection. At the same time, the concerns of those delegations that were ready to grant protection to webcasters had to be accommodated. However, not all Contracting Parties should be obliged to grant such protection. Therefore, a new flexible solution had to be found that would not harm those countries that were not ready for granting such protection. The Committee had to decide whether a solution should be found in the framework of the current negotiations on the protection of broadcasting organizations, or provided after the adoption of the treaty. The question was whether a specific optional instrument should be attached to the present treaty, or webcasting should be the object of a separate optional instrument.

174. The Delegation of the United States of America acknowledged that Alternative E had not garnered much support. However, many delegations had indicated that webcasting was a substantive issue that would have to be addressed in the course of the discussions. If the new instrument was to be an important tool for the future, it should address webcasting in some form. Maintaining the Alternative in the text would not impede progress in the discussions. Therefore, the Delegation wished for the Alternative to be maintained, but was also interested in hearing what other delegations had to suggest in respect of new innovative solutions.

175. The Delegation of Egypt stated, on behalf of the African Group, that it was not appropriate to include webcasting in the new treaty and it could only support Alternative D in Article 2 and Alternative G in Article 3.

176. The Delegation of the Russian Federation proposed a new formulation in relation to webcasting, based on a three-tier protection system that would include the possibility of a reservation.

177. The Chairman indicated that a three tier approach could include the following options: a first option would give Member States the possibility to extend protection to webcasting; a second would give Member States the possibility of extending protection to simulcasting only; and a third option would allow Member states not to extend any rights in that respect.

178. The Delegation of Zambia urged the Delegation of the United States of America to drop its proposal on webcasting, in order to enable a positive outcome of the Committee's discussions.

179. The Delegation of Senegal stated that progress had to be achieved during the session. Digital broadcasting was an important vector for transmission of information and culture. A favorable environment for the lawful exploitation of broadcasts was crucial for the developing countries. Although webcasting was a new area, the door should not be opened up completely. It should be ajar so as to allow the African countries to adjust their technical capabilities within a reasonable time frame. Those countries wanting to grant the beginning of protection to webcasting should be allowed to do so. Traditional broadcasting should still remain the main object of protection. A multi-tier approach would allow all countries to provide for the necessary protection according to their respective needs.

180. The Delegation of Japan could accept considering the issues of webcasting and simulcasting independently from the scope of the proposed broadcast treaty. Those issues

deserved further consideration, but the Delegation was prepared to participate actively in the discussions.

181. The Delegation of Argentina was of the view that Alternative C in Article 2 should be deleted, but could also go along on Alternative E of Article 3 on simulcasting.

182. The Delegation of the European Community and its Member States expressed support for inclusion of simulcasting in the scope of the proposed treaty. The Internet exploitation of broadcasts had to be addressed in the scope of the new instrument, and should not be postponed to an indefinite future. There was a need for an innovative solution that would do justice to new technological developments and embrace the digital environment. If that solution could not be found in the scope of the discussed treaty, it was necessary to look outside the scope of the treaty. Webcasting had to be addressed in a way that would not prejudice countries unwilling to grant such protection. The proposal submitted by the Russian Federation had some merit.

183. The Delegation of Brazil supported Alternative G of Article 3 and indicated it could not agree to the inclusion of either webcasting or simulcasting in the scope of the treaty. It would reserve its position on paragraph (2) of Article 3, since it was not convinced that the provisions of the treaty should apply in the same way to cablecasting organizations. The most important priorities of work of the Committee were included in the Development Agenda that had been presented at the last General Assembly by Argentina and Brazil and co-sponsored by 12 other developing countries. Any proposal on future work would depend on its compatibility with the goals and principles of the Development Agenda.

184. The Delegation of Mexico expressed its support for the inclusion of simulcasting in the scope of the new treaty, since that activity had already become a reality, but it could not support the inclusion of webcasting as an object of protection.

185. The representative of the Arab Broadcasting Union (ASBU) welcomed the concern expressed by all delegations to achieve progress and success after many years of work in the Committee. The reservations expressed by some delegations regarding the lack of balance in the proposed treaty were unfounded. On the contrary, the updating of protection for the broadcast signal and the improvement of broadcasting capacities in developing countries would strengthen the protection of rightholders. In relation to the object of protection, there was an important difference between traditional broadcasting and webcasting. Traditional broadcasting only required the updating of the legal protection outdated by technological, social and economical developments, whereas webcasting was connected to technological innovation and implied legislation on a completely new activity. It would be preferable to address the two issues separately while stressing the importance of adoption of a timetable for work on the protection of webcasting organizations.

186. The representative of the Electronic Frontier Foundation (EFF) stated that one provision of the proposed treaty was aiming at extending pseudo-copyrights to the Internet by means of a webcasting provision. Very little support from national delegations had been expressed to that proposal. The webcasting provision had to be rejected because the Internet was based on permission-free access. When rightholders' permission had been required for the various exploitation rights, the negotiation of licenses from copyright holders had provided ample protection for all parties. Adding a new layer of intermediaries above copyright holders for the reuse of information on the Internet would not benefit anyone. There was no demonstrable problem since proponents of webcasting rights had offered no credible evidence

that a lack of legal protection for webcasting rights had precluded the establishment of any Internet businesses. The creation of new pseudo copyrights would slow down adoption and innovation in Internet markets by requiring all content-related businesses to negotiate another layer of license agreements before they could offer products and services to the public. The likely result of introducing such new rights would be to skew the market. That was likely to constrain rather than increase the creation of more information products for the public.

187. The Representative of the Civil Society Coalition (CSC) was not convinced there was evidence that broadcasting organizations were facing signal piracy problems that could not be addressed by existing treaties and proper enforcement of national laws. The proposed treaty was not designed to protect creative works but rather to create new rights for broadcasters to commercially exploit works they did not create and did not own. Such rights would come at the expense of copyright owners and of the public domain. The treaty should not be extended to the Internet. The Internet presents the best opportunity ever to provide access to knowledge. Everyone is empowered by the vast sea of information that is now available. Broadcasters were seeking ownership of works that were now freely available. Webcasters would claim rights in works that were now freely available. The treaty would create a new layer of rights that webcasters could exercise even when rightholders had not authorized the distribution of works. She did not believe that is necessary to create these rights to ensure the dissemination of digital works. There are many technology firms who do not agree with this extension. Concern was expressed about pushing forward proposals when the Development Agenda had not been pushed forward in the same way. The proposed treaty was a threat to that Agenda. WIPO had to reassess its priorities, but should spend time on proposals aimed at extending access to knowledge. The Development Agenda had called for a new treaty on access to knowledge and had asked WIPO to examine the impact of new technological protection measures on consumers and innovation. No study on the effect of technological measures of protection existed even though there had been continuing problems with TPMs. She urged the Committee to set out a clear timetable for a study to look at the effects on consumers of TPMs and to set a timetable for setting out a treaty for access to knowledge.

188. The Representative of the Independent Film and Television Alliance (IFTA) noted that the text of any treaty to protect broadcasting organizations should not diminish the rights of copyright owners. In the context of discussions relating to protection of signal and content, however, the Berne Convention protected the creation and subsequent distribution of works. A more appropriate title for the new instrument might have been the 'Signal and Content Distribution Treaty'. Viewed in this way, it became clear that concentration on protection of broadcasting or cablecasting or webcasting organizations would misinterpret, if not overlook, the function of national and international distribution by national transmission, in conjunction with digital technologies, to potentially worldwide access. It might also have led to a better understanding of views expressed by others on existing and potential Internet access and use, as well as the need to prevent special interest groups from achieving unwarranted ambitions to the detriment of content owners and broadcasters. While he would not object to the text on webcasting remaining under consideration at the next session, serious reservations remained with respect to fundamental issues that need to be addressed, also in relation to the proposal by the Delegation of the European Community that included simulcasting when carried out by broadcasting organizations. Any broadcaster proposing to simulcast would first need to seek additional rights from content owners. Simulcasts could not be subsumed under broadcasting and, if they were recognized as webcasts, that would provide for distribution into a potentially worldwide market, even while such rights were specifically excluded from broadcast contracts. Any such request by broadcasters might be seen as defending against competition from other webcasting organizations, rather than seeking protection against unauthorized use

of their signal. Use of rights should be determined by the class of operator rather than the method of distribution, because the prospective market and appropriate commercial terms for the latter had not yet clearly evolved. Any discussions on webcasting, while ensuring that owner interests were not diminished by any treaty instrument, must also exclude any form of compulsory license. Broadcasters and other content suppliers, acting as producers, already benefited from specific content protection. Signal protection was important for both, because content without distribution was worthless, while signal without content was meaningless. Because consumers sought access to works distributed through a variety of systems, he supported any treaty that improved security of distribution, and in the case of the proposed treaty, protected broadcasters' signals and the carried content of all rightsholders. The Committee should obtain assurance that a short-term opportunity to conclude a treaty would not of itself permit inclusion of webcasting provisions or unacceptable licensing obligations. Webcasting should not be the sole preserve of broadcasters, and neither could the development of such services irrespective of the specific distributor be ignored. He could not support the expansion of simultaneous retransmission under the guise of simulcasting. The Committee should consider separate models for webcasting, by broadcasters and others, which would respect the need to serve the digital consumer with web-based services.

189. The Representative of IP Justice expressed concern at the perceived speed with which the International Bureau was seeking to convene a diplomatic conference to create new rights for large broadcasting organizations, without regard for the calls from developing countries for work plans that would provide access rather than barriers to knowledge, innovation and creativity. The WIPO Development Agenda was designed to refocus the work of WIPO away from continuous increase of intellectual property rights and toward enabling access to knowledge and assisting developing countries to foster innovation and creativity in alternative ways. Concern was noted among developing countries and international NGOs at the serious impact on civil rights, access to education, innovation, creativity and competition caused by "special-interest" laws such as the proposed broadcasting treaty. There was a perceived lack of evidence of need for a new treaty on broadcasting, nor any explanation of why existing intellectual property regimes were inadequate to meet the legitimate needs of broadcasting organizations. While the need to reward investment in broadcasting may have been appropriate in some circumstances, such considerations fell outside the scope of intellectual property rights and, as it was not WIPO's role to create rights for those who played no role in creating programming or other content, outside WIPO's mandate. The proposed treaty created new rights rather than harmonizing existing rights, without a showing that such rights were warranted. Member States should reject the entire proposed treaty, but several provisions in particular were threatening to undermine the goals of the Development Agenda and the public interest, such as Articles 16 and 17, concerning the circumvention of technological protection measures. In studies and reports from recognized institutions, similar provisions in the WCT and WPPT had received criticism as endangering freedom of expression, technological innovation and market competition, and the proposed provisions would not place developing countries on a level playing field with developed countries. Bypassing technological restrictions was necessary for consumers to access public domain programming, exercise fair use or other personal use rights under copyright, build interoperable technologies, engage in scientific research, library and archival purposes, and prohibitions that prevent the exercise of these activities would impede access to knowledge, and stifle technological and social development of countries that could benefit most. At the June 2004 Committee meeting, numerous objections had been raised against broadening the proposed treaty's scope to treat Internet transmission of programming under rules designed for traditional broadcasting. As the Internet and traditional broadcasting were entirely different technologies, they required separate regulation, and the inclusion of webcasting in

the proposed treaty would give traditional broadcasters an unfair advantage over new and innovative Internet companies. The proposed new right in Article 6 applied to retransmission “by any means” including via the Internet, which would encompass webcasting and peer-to-peer (P2P) file sharing, and thereby regulate consumer activity that was far removed from traditional broadcasting. The proposed text of the treaty would permit broadcasting organizations to lock-up and control public domain information and trump the rights of creators, and would harm artists by adding a further layer of regulation on their performances. Artists using alternative distribution models such as Creative Commons licenses could be stifled because those business models depended on wide dissemination of their works for success, whereas the proposed treaty would give broadcasting organizations the rights that would enable them to prevent wide distribution of works. The World Association of Community Broadcasters (AMARC) opposed extension of intellectual property rights to broadcasters.

190. The Representative of European Digital Rights (EDRi) expressed concerns that the rights contained in the Revised Consolidated Text could render public domain works inaccessible to users, where the only source of such works was in the archives of broadcasting organizations. The proposed treaty could extend protection to works and thereby remove them from the public domain. He did not support the protection given to anti-circumvention measures under the proposed Article 16, which would apply regardless of the copyright status of the underlying material, and could restrict access to public domain materials. Webcasting should not be included in the scope of the proposed treaty, as there was currently no evidence of need for such protection. Protection for webcasters could be considered in a separate instrument, if such a need became evident. There was no rationale to support granting protection to broadcasting organizations for 50 years, and no scientific or anecdotal evidence that the 20-year term of protection under the TRIPS Agreement had reduced investment. Stating that a 50-year term of protection would reduce public rights without granting benefit, support was expressed for the 20-year term of protection for broadcasting organizations, as proposed by the Delegation of Singapore.

191. The Representative of the Union for the Public Domain stated that the proposed treaty should be rejected as not in the interests of society, which relied on access to public domain materials to promote education and preserve culture. By granting broadcasters control over their transmissions, the proposed treaty would curtail access to a broad range of public domain materials that were only accessible through broadcasts. The proposed grant of broad new powers to broadcasting organizations did not assist in closing the knowledge gap between wealthy and poor nations, and was in opposition to the Development Agenda which emphasized access to information and knowledge sharing. It was noted that only incremental changes had been made to the Revised Consolidated Text and that objections raised previously remained valid. Article 14 did not specify the limitations and exceptions in any detail, and merely permitted countries to include limitations without requiring them to do so. The new monopoly privileges given to broadcasting organizations were well detailed and in mandatory terms, and the omission of such detail for provisions that accorded use and access rights to consumers and the public demonstrated lack of regard for the public interest. He supported the proposal by the Delegation of Chile to reopen discussions on limitations and exceptions. The public interest was threatened by lack of inclusion of an upper limit on the duration of monopoly powers given to broadcasting organizations. Article 15, which provided that transmission alone would trigger protection under the treaty, would enable broadcasters to indefinitely extend the term of protection merely by rebroadcasting the same work. By contrast, copyright and patent law contained safeguards by requiring originality or novelty in order to grant monopoly rights. Deep concern was expressed over the inclusion of

technology locks in Article 16 and related digital rights management provisions in Article 17, whereas no reference was made to the proposal by the Delegation of Brazil to delete Article 16. The Development Agenda expressly referred to technological locks as an issue of “great concern,” and the Committee should reconsider its position on Article 16 in the interests of information access and developing countries’ socio-economic development. Any error made in the treaty would be more destructive if its radical and untested legal protections were extended to the Internet by inclusion of webcasting. Webcasters should first demonstrate that they could gain acceptance for new legal protections in national legislatures before they should be permitted to assert such rights in an international treaty. The proposed treaty would not protect public access to knowledge and culture, and delegates should oppose its adoption.

192. The Representative of the Ibero-Latin-American Federation of Performers (FILAIIE) stated that beneficiaries of the proposed treaty should be restricted to traditional broadcasting organizations, and apply only to simulcasting and traditional broadcasting activities on the Internet. The proposal to include webcasters at the present time was immature, as there was no clear supervisory machinery for webcasters in all countries. The *à la carte* treaty approach as regards beneficiaries of protection would add complexity and uncertainty in its application. With regard to the scope of protection, if the aim were to provide protection against signal piracy, then it would be logical that such issues be considered in the context of telecommunications, rather than at WIPO. Any proposed treaty should not grant rights beyond those in the Rome Convention and any proposed instrument should be based on the right to prohibit, rather than exclusive rights. The Revised Consolidated Text gave options to States in that regard and was therefore unacceptable. There was a need to balance any protection for broadcasters with the need to grant protection to rightsholders and performers, particularly in the audiovisual area where there was no treaty. If broadcasters were granted exclusive rights over retransmission, and no treaty was established to protect audiovisual performers, the latter would be left without any protection. He supported Alternative AA and Alternative CC for the proposed Article 26.

193. The Representative of the International Federation of Musicians (FIM) noted that the Committee’s discussions frequently differentiated between traditional broadcasting and webcasters, described in some interventions as organizations that carry out ‘digital broadcasting.’ However, broadcasting was not limited to broadcasting of analogue data, and digital broadcasting may diffuse digital data in analogue ways. New technology led to new uses that might include interactivity, and more precision was therefore required in defining the concept of traditional broadcasting. The lack of a definition of “broadcast” also led to confusion between the signal used to send content and the content itself. Signal and content could be physically distinguished, and the result of a fixation was never a signal but only content. Article 2 of the Revised Consolidated Text referred to transmission, and it needed to be clarified whether that referred only to the first transmission. Article 2(b) referred to the programming of contents of transmission, although no definition was offered for assembly and scheduling of contents of transmission, and the concept of content of the transmission was also ambiguous, which was critical because it determined the added value that could justify protection. When broadcasting a sporting or news event, the event became a show, in the case of a ready-made film or production there was no assembly or scheduling, but merely fixing the time of broadcast. The purpose of protection, to combat piracy without affecting the exercise of other rightsholders’ rights, did not require the right of reproduction under Article 10 nor the right of making available under Article 12. Article 9 should be confined to the right to prohibit unauthorized fixations. The present wording of Articles 6 and 11 would provide broadcasters with exclusive rights that were not enjoyed by other rightsholders. The

parallels between new rights that might be granted to broadcasting organizations and those already enjoyed by other rightsholders under other treaties was only based on supposition, such that talk of balance might not be relevant when the application of certain proposals would lead to imbalance. Therefore, Article 24 Alternative AA should be retained, such that membership of the WCT and WPPT would be a prerequisite to membership of a treaty for protection of broadcasting organizations.

194. The Representative of the European Broadcasting Union (EBU) noted that the Committee's discussions had demonstrated a general readiness and enthusiasm for progress, as well as flexibility and willingness to begin a true negotiating process leading to a diplomatic conference. The time was ripe for a diplomatic conference, so as to reach a reasonable and meaningful result acceptable to the different regions of the world. The European broadcasters were grateful to the European Community and its Member States for the fact that their proposal included protection for broadcasters as simulcasters. In the context of "balance", emphasis was placed on the balance found among the three categories of beneficiaries of the Rome Convention *vis-à-vis* rights of one category affecting the other categories, which enabled those three categories to co-exist. In contrast, the rights proposed for the broadcasters' treaty protected a single beneficiary, not with respect to other rights owners, but to protect broadcasters against piracy or allow broadcasters to authorize use by third parties as far as their signals were concerned. With respect to technological protection measures and access to information of various kinds, opponents of the grant of protection to broadcasters against circumvention of effective technological protection measures were seeking access to content, not to the signal as such. Other treaties dealt with protection of content, including protection against circumvention of technological measures used by content owners, whereas the proposed treaty deals with broadcasters' signals. The primary task, indeed duty, of broadcasters was to satisfy their public's need for information, education, culture and entertainment, and they naturally sought to reach their public. Access to the content transmitted by pay-TV broadcasters, which relied on encryption to finance the provision of their services, was available to anyone who paid the subscription. Broadcasters chose choosing to encrypt their signals for copyright reasons, did so to prevent spillover into neighboring countries in the same language area when reception of the service by the public in such countries would result in economic conflict between parallel licenses granted by a content owner. In such cases, whether broadcasters chose to encrypt in order to ensure payment or to have the possibility to acquire a license from a content owner to broadcast content, they needed effective legal remedies against those who circumvented such technological measures. Only in that way could broadcasters ensure the service of providing information, as expected by their own public. In the Revised Consolidated Text, modification was needed for coherence in the provisions concerning retransmission, so that the scope of the definition properly reflected the intention expressed in the explanatory comments on Article 6.

195. The Representative of the International Federation of Film Producers Associations (FIAPF) noted, with respect to the inventory of rights proposed in the Revised Consolidated Text, that there was no statement to the effect that the various categories of beneficiaries should necessarily benefit from equivalent rights, and therefore the nature of the beneficiaries, and their function in the audiovisual economy, required clarification. As often stated and in almost perfect consensus, broadcasters needed to be able to protect their signals against illicit use. In that respect, concern was expressed with the Revised Consolidated Text, which did not limit the list of rights proposed to those strictly required to protect signals, but included the right of distribution or making available to the public, which were unrelated to the real activities of broadcasters and therefore their need for protection. The common objective

should be to lay a solid foundation in international law to facilitate the combat by all actors against endemic piracy in the world. If the rights given to broadcasters encroached on rights held by producers, that would lead to confusion which would inhibit the fight against piracy. Member States were urged to reopen a true debate on the rights underlying the proposed treaty and to take rational decisions based on the need to avoid conflicts between rights relating to content and those relating to the signal. He expressed concern at the discussions relating to the Development Agenda, and the perceived reduction of the needs of developing countries to questions of exceptions and limitations. Developing countries had reservoirs of talent and creativity, and needed support to fully express their potential as effective economic actors able to attract the large investments needed for audiovisual productions. Only proper protection of the rights of creators and entrepreneurs could underpin that vision and ensure global cultural diversity. That implied not only maintaining existing exclusive rights, while ensuring balance between those rights and the regime of exceptions and limitations, but also ensuring that adequate technological protection measures were available to enable the protection of works on digital networks.

196. The Chairman clarified that a list of speakers had been established on the first day of the Committee Meeting, including 12 non-governmental organizations, to conclude discussions on the proposal from the Delegation of Chile concerning limitations and exceptions. There would hopefully be another opportunity for discussions, although there was a general agreement in favor of the proposal.

197. The Representative of the International Music Managers Forum (IMMF) stated that, together with other NGOs, his organization had prepared and made available an amended version of their treaty proposal. Some 40 years after the Rome Convention, broadcasters, who represented a multi-billion dollar industry, were of the view that the time was ripe for a further extension of their rights. However, although it was some 90 years since radio was developed, performers were still not receiving basic global rights by way of remuneration in the United States of America and elsewhere when their performances were broadcast. Although the Agreed Statement on Article 15(3) of the WPPT provided that that issue was “left for further resolution,” some nine years later there had been no signs of progress. The Rome Convention, Article 1, provided that broadcast signals and underlying content should be treated as separate, stating that “[p]rotection granted under this Convention shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently no provision of this Convention may be interpreted as prejudicing such protection.” Article 1(2) of the WPPT contained almost identical wording, distinguishing the object of protection from the underlying content. While the view expressed by numerous delegations and observers was that broadcasters needed only strong signal protection to prevent piracy, the broadcasters themselves, in their paper “25 Questions and Answers” at page six, stated that “[t]his treaty is about protecting broadcasters’ rights in their signals regardless of what or whose content is being broadcast.” The commonly agreed objective of signal protection, as put forward by the Delegation of Singapore in January 2004, was not reflected in the Revised Consolidated Text. The definition of “signal,” as given in the Satellites Convention, could be employed in that context. Article 1(2) of the Revised Consolidated Text should be amended by the addition of the italicized words to provide: “Protection granted under this Treaty *shall be in relation to the signal only and* shall in no way affect the protection of copyright and related rights in program material incorporated in broadcasts.”

198. The Representative of the International Federation of Journalists (IFJ), emphasized that in accordance with the statements made by the African Group, the treaty should address

protection only for traditional broadcasting organizations, and not include webcasters, and the bracketing of that text in the Revised Consolidated Text was welcomed. The rights to be granted to broadcasters should be limited to fighting signal piracy and be in line with Article 13 of the Rome Convention. It was important to clarify the relation of the proposed treaty to other international treaties protecting copyright and related rights, and therefore support was expressed for Article 1, Alternative B. It was important for Member States to grant rightsholders the protection granted in the WCT and WPPT, and therefore support was expressed for Article 24, Alternative AA. Members were urged to give priority to the protection for audiovisual performers, and to grant such performers the protection they deserved.

199. The Representative of the National Association of Commercial Broadcasters in Japan (NAB-Japan) questioned why discussions on updating protection of broadcasting organizations had been ongoing for seven years, following conclusion of the WCT and WPPT, when there was unanimous agreement on the need to update that protection for traditional broadcasters. There was a recognized need to update it to correspond to the digital environment, as had been achieved through the WCT and WPPT while leaving broadcasters behind. The need for such protection had become more urgent as digital technologies developed and signal piracy escalated. Broadcasters provided an indispensable social medium of communication. Immediately following the recent devastating Niigata earthquake in Japan, and the consequent cuts in electricity, many people's access to information was restricted to radio. Television continued to provide access to every major sporting event. The claim that concluding a treaty to protect broadcasters would jeopardize public access to information was illogical, and the public would still be able to enjoy news, sports, music, and other programs on TV and radio through their receiving devices. Content in the public domain was easily accessible through broadcasts, which allowed the public to enjoy content freely for private purposes. The proposed broadcasters' treaty, in any event, did not affect content, because it only aimed to protect broadcast signals against piracy. If the proposed treaty were not established in the immediate future, broadcasters could not continue to play an important social role as a fundamental communication medium for people, because of the damage caused by piracy. Although it would be hard to imagine a world without broadcasters, their very existence was challenged, and that was intolerable. While all the necessary preparatory work was completed, following long discussions, there has been convergence of opinion at various Committee meetings concerning protection of traditional broadcasters. The diplomatic conference must be convened without delay, in the following year.

200. The Representative of the International Association of Broadcasting (AIR) highlighted the concern for balance that could be jeopardized by adoption of the proposed treaty. The treaty addressed the protection of programs broadcast by radio and television broadcasting organizations. Such organizations were protected by the 1961 Rome Convention and by the majority of national legislation with a related right to authorize or prohibit the use of their broadcasts. There was a clear need to update the Rome Convention in light of the "digital revolution" that had major repercussions for radio and television activities. While broadcasting organizations were called on to justify that necessity, the justification for updating national and international legislation was clear in the new technological environment. Any imbalance in protection went against broadcasting organizations, and no protection had been claimed for radio and television organizations that would cause harm to other parties. The protection claimed was for signals, not content. The Member States' proposals in the Revised Consolidated Text did not allow for any appropriation of content by broadcasting organizations. Broadcasters needed adequate protection against the

unauthorized use of their broadcasts, and such protection would enhance the protection of other rightsholders, including producers, performers and phonogram producers. The proposed treaty would finally complete the updating of international regulations that began in 1996 with the WIPO Internet Treaties, and was particularly important to developing countries. It was consistent with the United Nations' Millennium Goals and the Development Agenda. In Latin America, for example, there had been important developments concerning authorship of music and rights of performers and record producers, and the consolidation and development of that cultural industry relied upon a communication vehicle to channel its activities. For broadcasting organizations, it was particularly important to include a clause on technological protection measures in the proposed treaty, and address the application of technological protection measures equally in the WIPO Internet Treaties and the proposed treaty.

201. The Representative of the Association of Commercial Television in Europe (ACT) addressed the concern that broadcasters' rights might restrict or block access to material in the public domain. That concern was distinct from the concern of other rightsholders that any rights granted in a broadcasters' treaty should not prejudice the exercise of their rights. With respect to the public domain, on balance broadcasters enlarged rather than diminished public access to public domain material, and more such material was likely to be available if broadcasters' signals were appropriately protected than would have otherwise been the case. As a consequence, the existence of a legal framework that protected broadcasters would produce a net gain in public benefit. The role of broadcasters was to broadcast, meaning that the size of the audience was one important yardstick by which a broadcaster, and its revenue, was measured, and for a commercial broadcaster that sold airtime to advertisers the audience size would therefore be a matter of commercial survival or failure. Although it would be counter-intuitive to state that broadcasters would wish to block access, such a claim had been made, and it was useful to respond by identifying and analyzing the interests in play. As a case in point, he referred to a particular painting in the public domain, owned by a public museum and copied on a postcard. If one would show the picture publicly, one would have had to obtain the consent of the museum, either to photograph the painting, or reproduce the postcard, which itself enjoyed copyright protection. To say that a work was in the public domain meant that the heirs of the artist no longer enjoyed the right to authorize or prohibit, among other acts, its reproduction, other than by virtue of survival of moral rights. However, the museum, as the owner of the painting, had the right to control access. A museum as a public institution fulfilled its function to serve the public by allowing access to the public free of charge while, as a condition of entry, restricting the right to photograph the paintings. Among the reasons for such restriction was that the sale of postcards provided a subsidiary source of revenue for the museum, and because the postcards, as protected copyright works, gave the museum rights which it would not otherwise have in respect of the exploitation of the images by third parties. The museum embodied the cultural heritage of the population who, as taxpayers, had a legitimate interest in the museum's costs being offset by revenue-generating activities. In the context of a program-maker creating a program about the artist, the fact that the work was in the public domain did not mean that the program-maker was free to include any chosen work by that artist in its program. In each case, he would have to negotiate access agreements with the public institutions and owners of works, and their willingness to allow filming and subsequent broadcast would depend also on their assessment of the legal environment in which the broadcast was to occur. Behind the simple act of transmission lay a process of sometimes complex negotiation by which the legitimate interests of stakeholders needed to be brought into equilibrium. To speak of broadcasters blocking access to public domain material was to distort and misunderstand the process and the interests involved.

202. The Representative of the International Confederation of Societies of Authors and Composers (CISAC), also speaking on behalf of the International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), expressed appreciation that the documentation accompanying the Revised Consolidated Text acknowledged the importance of protecting the interests of underlying rightsholders, without whose creations a broadcast would be worthless, even while the difficulties in pursuing such a goal could not be underestimated. Such concerns needed careful consideration before a timetable towards a diplomatic conference could be considered. The rights envisaged in the Revised Consolidated Text remained too far-reaching when considered in the context of the current discussions. In particular, the original rationale behind such discussions had been the protection of so-called “traditional broadcasters” against the theft of their broadcast signal. Accordingly, the introduction, for example, of a wide-ranging and exclusive transmission right, which was not even enjoyed by all the holders of rights in works so transmitted, appeared to be one step too far. In the context of the current discussions, it would be premature to protect webcasts and webcasting organizations, which would change the character of the proposed treaty.

203. The Representative of the International Federation of the Phonographic Industry (IFPI) noted that the catalog of rights afforded to broadcasting organizations in the Revised Consolidated Text had an impact on the position of other rightsholders, and Member States should bear in mind the effect on the rest of the creative sector of an overly generous catalogue of rights for broadcasters. While the exclusive rights given to broadcasters did not, in themselves, conflict directly with the rights given to other rightsholders, they did have a severe effect on the position of other rightsholders in the market. For key uses of music, for example by means of transmission, broadcasters would in many cases be the only party that enjoyed rights and therefore would be in the position to establish business models to best suit only their own interest. Such an unbalanced and unfair situation would also lead to services negotiated by broadcasters, designed to maximize exposure of the program and advertisement income, and with little emphasis on the proper presentation or protection of the broadcast content. With reference to the statements made by the Delegations of Australia, New Zealand, and the European Community to the effect that broad protection for broadcasting organizations was already available in their territories, it was noted that the implications of such rights in an international treaty would be very different. The copyright systems and the protection for holders of rights in the content varied around the world. Therefore, linking accession to the proposed treaty to accession to the WIPO Internet Treaties would not be unreasonable, and indeed would be essential to address the concerns of her organization. The Committee should set aside time in its next session to reconsider the effects of a full exclusive transmission right as proposed in Article 6. Also, the new options in the proposed footnotes to Articles 9, 10, 11 and 12 showed that, with respect to all uses based on fixations, if included in the catalog, it would be important to consider a right to prohibit rather than a right to authorize. The text as proposed in the footnotes should serve to compare the two ways of drafting such rights and clarify the benefits of a right to prohibit. At the same time, the application of the proposed treaty network of protection with its requirement of national treatment to differing protection standards, including the option of full exclusive rights, would not be feasible. While the proposal that protection be extended to cablecasting organizations was positive, she called on the Committee to reserve the work on protection for webcasters for a separate debate. She had no objections to granting broadcasting organizations 50 years of protection. The provisions for protection for technological measures and rights management information were considered to be the key provisions of the proposed treaty, because broadcasters and members of the public would both benefit from the application of such protection, and they were essential elements of updated protection. Technological

measures had been applied successfully in countries supporting technology already through legal protection, and the best protection measures were the ones not noticed under normal circumstances. Protection measures and rights management information in conjunction were used to make broadcasts available, not to lock them up. She referred to a position paper that summarized the views of 14 organizations in the creative sector.

204. A representative of the Asia Pacific Broadcasting Union (ABU) stated that after seven years of debate in the SCCR, it was clear that there was an urgent need to upgrade broadcasters' rights. A litany of cases had been cited during all the SCCR sessions to prove that rampant piracy existed. Similar problems to the one cited by the Delegation of Senegal with regard to the exercise of the right of communication to the public had been experienced by Filipino broadcasters during the recent Olympics Games. The objective of the right of communication to the public under the Rome Convention was to grant protection against the unfair enrichment of entrepreneurs who took advantage of broadcasts for the benefit of their own business. Her organization opposed the proposal to grant broadcasters rights to prohibit instead of full exclusive rights. It also opposed the 20-year term of protection instead of 50 years, and the deletion of Article 16 on technological measures of protection and of the right of communication to the public. The new instrument would not impinge on existing rights, and would not affect private reception and recording of broadcasts.

205. The representative of the Digital Media Association (DiMA) agreed with the view of the Delegation of the United States of America that webcasting deserved treaty protection against signal piracy in the new instrument. In order to meet the challenges posed by digital technological developments, the new treaty had to address the piracy facing all forms of media and transmission modes in a technology-neutral way. A treaty that merely granted additional rights for modes of transmission known for 50 or 90 years would be obsolete before it was implemented, and would retreat from the foresight shown by WIPO Member States in crafting the Internet Treaties. He recalled that at the June 2003 WIPO Information Meeting, representatives from DiMA and Yahoo! had explained webcast streaming technology and the extensive business investments required to create and transmit webcast programming, and the reality of webcast piracy. WIPO still made audio files of those presentations available on its Internet website. According to the leading broadcast analyst, Arbitron, more than 50 million people enjoyed Internet webcast streaming each month. Consumers liked Internet webcasting because it exposed a wide variety of music and culture and programming otherwise unavailable by broadcast radio. The increasing availability of high-speed broadband Internet in Europe, South America and Asia, and the growing number of webcast services around the globe demonstrated that those data were a paradigm of the trend worldwide: Internet webcasting was a mainstream activity that substantially contributed to the dissemination of world culture and entertainment. It was especially important to developing countries. A press release distributed by the Cable and Satellite Broadcasting Association of Asia (CASBAA) supported the inclusion of webcasting in the new treaty. Also, he commended the innovative suggestions of the Russian Federation.

206. The representative of the International Federation of Actors (FIA) stated that his organization understood the needs of traditional broadcasters and cablecasters, as far as cable-originated programs were concerned, to fight the illegal use of their signals. A proper signal protection was in the interest of content rightholders, and the new treaty should not derogate from the obligations that Contracting Parties had under the Rome Convention and other international treaties in the field of copyright and related rights. His concerns were related to the creative investments made by actors in audiovisual works that contributed to the content of the signals of the broadcasters which, despite the goodwill of many delegations,

remained unprotected at international level. Any possible new treaty updating the rights of broadcasting organizations should be linked to the existing WIPO treaties, in order that the ratification of the former should be subject to the ratification of the latter. In addition, he noted that many of the proposed exclusive rights in the signal could affect, and possibly conflict with, the exercise of rights of content owners. The footnotes in Articles 9, 10, 11 and 12 did not provide a viable effective solution as they were *à la carte* options for Contracting Parties. Therefore, he suggested that broadcasters be granted the rights to prohibit acts only in relation to unauthorized fixations. The protection of webcasters should be discussed at a separate stage.

207. The representative of the National Association of Broadcasters (NAB) referred to the meetings on broadcasters' rights held in Manila in 1997 and Cancun in 1998, as well as the reports of the various SCCR sessions where the need to update the rights of broadcasting organizations in the existing conventions was made clear. If a new treaty had to strike the balance among all stakeholders' rights, his organization could not understand why the right of communication to the public could not be granted; that a right to prohibit could be granted instead of a right to authorize and prohibit; that the term of protection had to be 20 years instead of 50 years; and that broadcasters could not enjoy the protection of technological measures of protection. Many of the concerns expressed by some delegations regarding the harmful overlapping of the new treaty with respect to other treaties were not well founded. The preamble, Article 1 and the declarations from the Delegations of the European Community and New Zealand, in which territories the protection of broadcasters had been in place for years, coexisting with other stakeholders' protection without any problem, could serve as an example. Another example was that at least ten Latin American countries had national legislation that included exclusive rights similar to those proposed in the treaty, without any problem having been reported. In that regard, his organization could not understand why the representative of IP Justice had stated wrongly that the rights proposed were not in force in many countries. The national legislation of Singapore and Chile provided a 50-year term of protection, and Brazil provided 70 years. If no technological measures were included in the treaty, the message to the international community would be that signals did not deserve the same protection that was granted to content, and eventually that could be very detrimental for all rightholders. His organization believed that the stocktaking process had come to an end, the mission had been accomplished and the time for a diplomatic conference had come.

208. The representative of the International Federation of Associations of Film Distributors (FIAD) supported the statement made the Delegation of FIAFP regarding the right of distribution and making available to the public. FIAD could not support the deletion of Article 16 as it was an effective means to fight piracy not only concerning the signal, but also the content it would carry. Regarding Article 24, he agreed with Alternative AA as it was necessary to abide by the rules in preexisting treaties, namely the WCT and the WPPT, before joining the new treaty.

209. The representative of the North American Broadcasters Association (NABA) indicated that cultural industries in Mexico, including broadcasters, represented an annual turnover of US\$ 7.7 million, and employed more than 45,000 people, including writers, composers, performers, among others. Broadcasters deserved a real and urgent updating of protection. A treaty without technological measures of protection would end up as a mere declaration of good faith and empty words. Her organization understood the frequent groundless concerns expressed by government delegates and NGO representatives regarding the new rights to be granted. Technology kept evolving and digital broadcasting knew neither geographical

borders nor nationalities. Many of the rights under discussion were granted already in numerous national laws, even in broader terms and with less limitations, so a new treaty would only make protection more effective in the digital environment. If an ultimate step was not made at the present SCCR session, members of the international community would start losing interest in the treaty process initiated some years ago, and it would be a clear message for users that signals could be freely used and pirated in digital networks.

210. The representative of the Union of National Radio and Television of Africa (URTNA) indicated that in the African region, broadcasting was not only a tool for cultural and political development but also a tool for economic development. A recent study carried out by a renowned media research expert in Africa had indicated that in the wake of liberalization of the airwaves, both sound and television broadcasters directly and indirectly employed 0,05% of the population in the last 10 years. Togo and Kenya, for instance, had licensed over 50 and 60 new FM radio stations, respectively. Broadcasters in the African region needed effective protection against the unauthorized retransmission, encryption or decryption, fixation and reproduction, among other acts. If no protection of technological measures was included in the new treaty, it would be tantamount to a doctor saying to a patient that he would be cured not only by amputating the limbs but also by chopping off the head. Lobbyists not affiliated with the African region or the rest of developing countries should not use them as an excuse to deny higher protection to broadcasters. Indeed, their reasoning was not well founded, because information and educational material would not be locked up if the new treaty was adopted. His organization supported the convening of a diplomatic conference as soon as possible.

211. The representative of the International Organization of Performing Artists (GIART) indicated that simulcasting or simultaneous retransmission on the Internet by traditional broadcasters should be included in the new treaty, but not webcasters. Regarding the scope of protection, it was necessary to distinguish between the signal and the content protection. The rights of distribution and making available should be excluded from the treaty as protection should not go beyond the rights granted in the Rome Convention. The rights granted should be rights of prohibition and not exclusive rights to authorize and prohibit. Protection could not be granted to signals that carried content that was not protected as was the case of audiovisual performances, so a treaty on audiovisual performances should be adopted before considering the adoption of the broadcasters' treaty. Regarding Article 24, she supported Alternative AA, and with regard to Article 26, she supported Alternative CC. The new treaty should not create an imbalance among the rights of other stakeholders.

212. The Chairman proposed to revisit Item 4 of the Agenda and asked the delegations that had asked for the floor whether it would be acceptable for them to withdraw their request, if a conclusion would be presented at the end of the session that established that an agenda item on exceptions and limitations for the purposes of education, libraries and disabled persons would be placed on the agenda of the next SCCR session. He noted that those delegations agreed on not asking for the floor. He proposed then to revisit the questions of webcasting and simulcasting. He asked the Delegation of the Russian Federation to give further details about its proposal regarding webcasting.

213. The Delegation of the Russian Federation stated that one of the possible alternatives to accommodate the different views in the new instrument would be to include three levels of protection with the possibility of reservations, so that Contracting Parties could choose the most suitable protection according to their respective level of development. Those three levels could be included in a protocol to the new treaty.

214. The Delegation of the United States of America continued to believe that inclusion of webcasting in the treaty negotiation process was very important. It wanted to keep the Alternative granting such protection included in the next Revised Consolidated Text, together with the Alternatives proposed by the European Community and the Russian Federation, as well as any other constructive suggestions that might help to deal with the matter in a diplomatic conference.

215. The Delegation of the European Community would be willing to consider an optional protocol to a future broadcasters' treaty for the 21st century that covered the issue of webcasting. Another alternative could be a joint declaration or a particular article in the instrument. All options should be on the table.

216. The Delegation of Ukraine supported the statement of the Delegation or the Russian Federation. A diplomatic conference should be held next year.

217. The Delegation of Brazil considered it entirely premature to negotiate on webcasting in whatever form. It was supportive of considering issues of the 21st century, that was why it supported negotiations on a WIPO treaty on access to knowledge and technology which had been tabled during the September 2004 WIPO General Assembly. There was a clear mandate from the General Assembly to accelerate the work in the SCCR, so that it could be in a position to recommend the convening of a diplomatic conference. Therefore, the SCCR had to make a serious effort to bridge the important differences that continued to separate some of the delegations in respect of certain provisions. It was important to bring the North and the South together in an open debate and to give opportunities to consider each others' positions. In that respect, the Delegation proposed to organize an *ad hoc* intersessional intergovernmental consultation meeting in Geneva, before the next session of the SCCR.

218. The Delegation of Egypt, on behalf of the African Group, indicated that there were some difficulties in accepting the options presented regarding webcasting and recalled that the SCCR should not forget that the treaty under discussion had to respect the balance of interests of all countries participating in the negotiation. It finally mentioned that the proposal made by the Delegation of Brazil, regarding the organization of an open ended meeting before the next SCCR, should be considered.

219. The Delegation of India supported the intervention of Brazil. Many differences need to be sorted out before moving to a diplomatic conference. There was a high degree of homogeneity in the positions within each regional group, as for example in the African Group. Consequently there was no need for Regional Consultations as such, and it would be more appropriate to hold intersessional open-ended consultations with participation from all regions, allowing the narrowing of cross-regional differences.

220. The Chairman introduced his conclusions indicating that the Committee at its twelfth session had made considerable progress, in a constructive spirit. The discussions had been aimed at accelerating the progress of the work, towards narrowing the substantive differences in the Revised Consolidated Text. Progress was made in concrete terms on many points. Many delegations had showed extraordinary flexibility when expressing their positions and a new openness towards considering different options. It was only natural that not many final concessions on concrete points were made; that was because Delegations wanted to maintain negotiating positions until the start of next stage of the work. More progress in substance was

not likely before a new negotiating phase started. Concrete examples of the progress were the following:

- it seemed that there was a basis for the preparation of a next version of the Revised Consolidated Text;
- in that context the elements in square-brackets in the present version need not be retained in the next version of the text;
- this was true both for elements dealing with webcasting and the alternatives presented in the Article dealing with technological protection measures;
- examination of alternative solutions to provide protection for webcasting organizations will commence;
- results of that examination might be presented to the SCCR in a separate working document;
- in the context of articles on rights on acts that followed fixation, the Committee considered the possibility of introducing a two-tier-level of protection; that model received growing expression of interest;
- a new alternative will be added to the text; the remaining single paragraph of Article 16 will be presented as an alternative together with an alternative implying that no such provision be included in the final version;
- as regards the provision in the Article on becoming party to the treaty, the Alternative making accession conditional on being a contracting party to other instruments will be put in square-brackets;
- the analysis on the provisions on the relation to other treaties was deepened, and there was readiness to develop a concrete compromise, possibly in the form of a provision merging the two Alternatives appearing in the present text;
- attention of delegations will be drawn in the next version of the Revised Consolidated Text to the needs for further streamlining of the retransmission right, to which there were references in the Explanatory Comments in the context of the Article on limitations and exceptions;
- the Alternative of a term of protection less than 50 years received additional support; the Alternative will be maintained in the text.

221. In order to make further progress, and in the light of the mandate from the 2004 WIPO General Assembly to accelerate the work, the Chairman offered a number of conclusions for comments by the Delegations. As regards broadcasting organizations, the conclusions covered the three following issues: documentation, regional consultations, and organization of the thirteenth session of the Standing Committee. First, on the issue of the documents to be prepared, a second revised version of the Consolidated Text will be prepared by the Chairman of the present session of the Standing Committee. Moreover, a working paper on alternative non-mandatory solutions on the protection of webcasting organizations, including simulcasting organizations, will be prepared to accompany the second revised version of the

Consolidated Text. Second, Regional Consultation meetings will be organized by the International Bureau, as requested by the Member States. Third, the thirteenth Session of the Standing Committee will take into account the progress made in the regional meetings. The Committee will, in the light of the results of the regional consultations, consider the second Revised Version of the Consolidated Text, and examine the working paper on alternative solutions on the protection of webcasting organizations.

222. As regards the proposal by Chile concerning exceptions and limitations to copyright and related rights, the Chairman concluded that an agenda item on exceptions and limitations for the purposes of education, libraries and disabled persons will be placed on the agenda of the Thirteenth Session of the Standing Committee.

223. The Delegation of Brazil expressed its willingness to engage in a discussion on the conclusions, for which it requested that a written copy of the same be distributed to all delegations, as in previous sessions of the SCCR.

224. The Chairman indicated that a written version of the set of Conclusions was being shown at that time by means of the technological equipment available in the room. He also offered to read again the conclusions slowly and proceeded accordingly.

225. The Delegation of India reiterated its support to the proposal made by Brazil to hold intersessional open consultations instead of regional consultations, and complained that such a proposal had not been reflected in the Chairman's conclusions. In order for the Conclusions to be considered those of the Committee and not merely the Chairman's conclusions, the Delegation requested some indication from the Chairman that its suggestion had been taken into account.

226. The Chairman stated that all delegations were aware of the proposal concerning intersessional meetings, but that he could not yet react to it before listening to all delegations and seeking the advice of the International Bureau on the organization of different kinds of meeting activities.

227. The Delegation of India expressed its view that the Conclusions by the Chairman, in order to be actionable, had to be somehow agreed by the Committee, as it was only the Committee which could take decisions.

228. The Chairman stated that all interventions and comments by Delegations will be reflected in the report, then it will be seen how to make them actionable.

229. The Delegation of Egypt, expressed its view that the proposal made by Brazil on the need to hold interregional open-ended consultations was worth consideration.

230. The Delegation of the European Union and its Member States believed that simulcasting and webcasting should remain in the future versions of the Revised Consolidated Text. The Delegation also requested clarification regarding the reference to webcasting and simulcasting organizations in the Chairman's conclusions, which in its view should be limited to *webcasting* and *simulcasting* as such, because the starting point regarding the subject of protection should be confined to broadcasting organizations.

231. The Delegation of Zambia stated that it had always supported the declarations on behalf of the African Group, but only in cases where they resulted from a previous discussion within

that Group, which was not the case as regards the declaration supporting Brazil's proposal to hold an intersessional open ended meeting. In that case Egypt had only expressed its own view. The Delegation of Zambia considered that the Chairman's summary reflected well the different positions. The Delegations were not yet ready to drop their positions, as exemplified by the Delegation of the United States of America on the issue of webcasting. However, in order to make progress the Chairman had reflected all the different views in his summary, even if it was impossible to completely satisfy all delegations.

232. The Delegation of Senegal supported the conclusions of the Chairman as regards the need to hold regional consultations in the process leading to a diplomatic conference. The Delegate recalled that such a solution had been proposed by Morocco and endorsed by Togo, and now also by Senegal.

233. The Delegation of Algeria thanked the Russian Federation for the proposal to protect webcasting under a non-mandatory protocol with a possible three-tier protection. That solution could enable resolution of the pending differences on that issue. The Delegation also expressed its support for the holding of regional consultations, which had always taken place before a diplomatic conference.

234. The Delegation of Brazil indicated that the nature of the issues being analyzed in the SCCR required a collective deliberation and decision, rather than a Secretariat-driven process, for which the Chairman should undertake an honest effort to capture the different positions. In a constructive spirit Brazil had suggested a framework for discussion that had received support from several Member States and should consequently be reflected in the Chairman's proposal. The Conclusions by the Chairman led to consider that the SCCR agreed to convene Regional Consultations, which was not the case. The Delegate recalled the Recommendation adopted in the last SCCR on the issue of Regional Consultations, which he quoted: "*Regional Consultations: depending on the decision of the WIPO General Assembly under Point A.1 above, and the recommendations of the Standing Committee, the International Bureau shall organize regional consultation meetings where appropriate and at the request of the relevant regional groups.*" That Recommendation made clear that Regional Consultations were to take place *at the request of the relevant regional groups*. However during the present session of the Committee no regional group had made such a request. Had that been the case Brazil will support it. It was necessary to stand by the decisions taken by the General Assembly. The Delegation did not agree on a set of conclusions that diverged from those decisions and did not reflect the positions expressed in the SCCR.

235. The Chairman questioned why Regional Consultations, that had proved useful in previous processes leading to a diplomatic conference, should not be useful also in the present case. The Conclusions were indeed Conclusions by the Chairman that all delegations were invited to join.

236. The Delegation of Morocco expressed its support for holding Regional Consultations, allowing the convening of a diplomatic conference leading to the adoption of a treaty on the protection of broadcasting organizations. The SCCR had made considerable progress so there were few pending issues, which should be resolved through regional consultations. Morocco had undertaken a broad process of liberalization of broadcasting and satellite transmissions, which will stimulate the creation of new broadcasting organizations and the overall development of communications. In that context adequate protection of broadcasting organizations was of crucial importance.

237. The Delegation of the Syrian Arab Republic expressed its support for holding Regional Consultations and expressed the importance of further discussion on Articles 16 and 2. It also supported the inclusion of the issue on limitations and exceptions in the thirteenth session of the SCCR.

238. The Delegation of Colombia made two observations. First, as regards a future document on alternatives for protection of webcasting organizations, it was important to note that Article 3 covered three different possible subjects of protection. However traditional broadcasting should extend to simulcasting activities, without establishing a new subject of protection but by setting up a special situation. Secondly, as regards regional consultations, which had been traditionally held before a diplomatic conference, it was appropriate to question whether the weak financial situation of WIPO will allow to undertake such meetings with the resources required. While financing of delegations for participation in the SCCR was limited to five delegates from developing countries, the regional consultations before the 1996 Diplomatic Conference covered between 15 and 20 financed participants from each region. Moreover the reasoning that most of the differences in the broadcasting discussion were not manifested at the different regional groups, but were of interregional character, merited some consideration. In that context, in the present discussions webcasting might play a similar role as the issue of transfer of rights during the 2000 Diplomatic Conference. In consequence, the Delegation expressed its preference for the proposal by India for holding an interregional consultation, instead of regional consultations.

239. The Delegation of Uruguay supported the conclusions by the Chairman and stressed the importance of not losing momentum in the discussions. It also agreed to the preparation of a second revision of the Consolidated Text. The Delegation accepted the search for alternative solutions for webcasting, although it would rather have it excluded from the scope of protection and dealt with at a later stage. Priority in present discussions should be given to broadcasting and simulcasting. The Delegation supported the previous statement by Colombia and stated that it favored flexibility on the question of regional consultations. In its view regional consultations will be positive, and the addition of an ad hoc intersessional meeting was also welcomed.

240. The Delegation of Mexico stated that the SCCR had devoted 12 sessions to an issue of utmost importance, without yet deciding on its final outcome. Broadcasting organizations, which were partially protected already under the Rome Convention and national legislation in many countries, played an important role in the dissemination of culture. The conditions needed for undertaking regional consultations were present, in its view, which should lead to a diplomatic conference.

241. The Delegation of Norway attached importance to updating the protection of broadcasting organizations, and remained flexible as regards the alternative ways for a possible protection of webcasters and simulcasters. The Delegation also supported continuing the discussion on limitations and exceptions in the SCCR.

242. The Delegation of Argentina questioned the nature and pertinence of the Conclusions by the Chairman. The content of a possible treaty should not be part of the Conclusions by the Chairman. It should derive from a negotiation between the Delegations and not between the Delegations and the Chairman. The Delegation contested the declaration of the Chairman in the sense that Alternative V in Article 16, on Technological Protection Measures, unlike most other alternatives in the Text, will not remain in the next version of the Revised Consolidated Text. It appeared as rather extraordinary that Alternative V, which only

contained an open list of examples and was therefore completely uncontroversial, was a candidate for deletion. It was to be noted that Argentina did not withdraw its proposal as embodied in Alternative V, Article 16. The legal basis of the working paper on alternative non-mandatory solutions on the protection of webcasting that will accompany the Revised Consolidated Text was far from clear, as there was neither agreement from Member States to discuss the issue nor mandate for such a document. In order to have such a document, even if it was a simple working document, a request from Member States was necessary. Likewise the regional consultations had to be requested by the respective regional groups. On the other hand an interregional session could be useful in order to prepare the next Standing Committee.

243. The Delegation of the United States of America referred to the Conclusion by the Chairman to take webcasting, simulcasting and a possible multi-tier alternative solution out of the Revised Consolidated Text and place them into a new working document. The Delegation opposed that proposal, and considered that the proper way to discuss the issues of webcasting and simulcasting was to retain them in the Revised Consolidated Text so that they might be analyzed in the context of the rest of provisions.

244. The Delegation of the Russian Federation supported the convening of regional consultations, which had been already requested by the Delegation of Ukraine on behalf of the CIS States. As regards the Chairman's conclusions, it would be better to speak of a working document containing an alternative solution to the problem of webcasting and simulcasting. That broader wording will allow examination of the proposals that had been made either as a substantive, separate document or as a part of the Revised Consolidated Text.

245. The Delegation of the Islamic Republic of Iran noted the considerable progress that had been achieved in addressing the Consolidated Text in the spirit of cooperation among Member States, and with a view to speed up the work of the Committee. While regional consultations, as suggested by some delegations, provided one alternative to move forward with the Committee's work, there were other possibilities. In support of the position expressed by the Delegations of Egypt, India and Brazil, it was suggested that an intersessional meeting was a more appropriate means to engage all Member States in reaching consensus on the substantive issues under discussion.

246. The Delegation of Zambia reflected on the fact that most Member States and delegates in the Committee had attended previous discussions, and participated in a process of compromise in order to reach a consensus to move forward. However, some delegations had made demands without respecting the spirit of compromise. Making a decision to hold regional consultations to discuss outstanding issues was a simple one, in comparison with more complex issues on which compromises had previously been made by delegations, including itself.

247. The Delegation of Chile agreed with the statements made by other delegations, including Colombia, Brazil and India, that regional meetings were not the best approach to move discussions forward, and that the wording of the conclusion should be reconsidered to include reference to holding other intersessional or open-ended informal meetings that allowed all Member States and observers to participate.

248. The Delegation of China stated its general support for the conclusions of the Chairman, and suggested that the International Bureau consider facilitating an exchange of experts from

the governments of developing and developed countries. That would enable developing country governments to learn more about webcasting in developed countries and understand why their protection was required, and enable developed countries to understand the concerns of developing countries with respect to webcasting. In that way, it might become clear that webcasting was not an urgent issue for consideration in developing countries, and should not be a priority on the Committee's agenda. Such exchanges of experts would also assist in the preparation of a revision of the Consolidated Text, and in organizing regional consultations.

249. The Delegation of El Salvador agreed with the Delegation of Uruguay, and stated its general support for the conclusions of the Chairman. It would benefit the Committee process to maintain momentum in discussions. While the Delegation expressed some concerns about the Consolidated Text, it considered that it would be useful to progress on agreeing definitions in the proposed treaty.

250. The Delegation of Serbia and Montenegro expressed support for the conclusions of the Chairman, and noted that the conclusions were accepted as a compromise in the context of the Chairman's earlier comments and in the general context of discussions in the Committee. Caution was also urged in expressing requests to the Secretariat that might have significant financial implications, as had been discussed in the General Assembly.

251. The Delegation of Honduras expressed its support for holding intersessional meetings rather than regional consultations, and noted the financial implications of such meetings. With respect to incorporation of treaty-language proposals into the Consolidated Text, issues remained to be discussed, and support was expressed for the proposal by the Delegation of Chile in that respect.

252. The Delegation of Colombia clarified its earlier intervention by stating that it supported the holding of regional meetings, and noted the recommendation of the Committee's session in June 2003 concerning venues.

253. The Delegation of Togo thanked the Chairman for his relevant conclusions, and called for flexibility in light of the General Assembly's request that the Committee's work be accelerated with respect to the protection of broadcasting organizations. That was the concern guiding the Committee's discussions, and in particular reflected the concerns of the African Group. The Delegation supported regional consultations to enable the holding of a diplomatic conference on the protection of broadcasting organizations at the earliest possible date.

254. The International Bureau clarified the existence of precedents for holding regional consultations, which provided a useful means to discuss issues. With reference to the statement of the Delegation of Colombia, the International Bureau would consider carefully the financial implications and scheduling of any such meetings, in the context of requests received by Member States. Delegations could request the Chairman to add reference to other types of meetings to his conclusions, with a view to accelerating the work. While the International Bureau acted at the request of Member States, numerous Member States had requested regional consultations.

255. The Chairman proposed to modify his conclusions in light of statements made by several Delegations, specifically by modifying Section A.2 to read "Regional and other informal consultations," so that the text would accommodate the requested types of meetings by providing "regional consultations and other types of informal consultation meetings will be organized by the International Bureau, as requested by the Member States;"

256. The Delegation of Brazil thanked the International Bureau for clarifications that would assist the Member States to decide the future work of the Committee in its deliberations on a possible new treaty. While acknowledging the potential usefulness of the proposal by the Chairman, the Delegation took issue with the proposed new language, which in its view did not properly capture the general sentiments of the Committee. The Delegation questioned the number of Delegations that had supported regional consultations and noted that, while several delegations might have been in support, others preferred different types of consultations. The Delegation would not block a request by any specific regional group to hold a consultation in its region. In that regard, the Delegation insisted on following the recommendations of the previous session of the Standing Committee in respect of organizing regional consultations when requested by the relevant regional groups. As such, regional consultations should occur where appropriate at the request of regional groups rather than individual Member States.

257. The Chairman clarified that the wording in Section A.2 of the conclusion was intended to reflect all proposals, including those made by the Delegation of Brazil, and enable the International Bureau to address all requests. He asked the Legal Counsel to clarify the application of procedural rules to the circumstance of a conclusion of the Chairman.

258. The Legal Counsel clarified that it was the decision of the Committee as to how to adopt a conclusion. It was standard practice in WIPO Standing Committees that the chairman would propose conclusions based on his or her sense of the discussions. The Committee Members could adopt the text as the conclusion of the chairman.

259. The Delegation of India noted that, in accordance with the implicit endorsement of the General Assembly, regional consultations should be held where requested by regional groups. A modified text was proposed that read: “Regional consultations based on requests by regional groups, followed by an open intersessional intergovernmental consultation of the Committee will be organized by the International Bureau as requested by the Member States”.

260. The Chairman asked whether the Committee could agree on the proposed text of the conclusion by the Chairman of the Standing Committee as the conclusion of the Committee, or whether the text should be included in the report as “Conclusions of the Chairman”.

261. The Delegation of Brazil, with reference to the statement of the Legal Counsel, noted that it remained the decision of the Committee whether to adopt the conclusions of the Chairman, and that the Committee was being asked to agree to a conclusion with which all delegations were not willing to agree. The conclusion should be revised to reflect the concerns and positions shared by a number of delegations. In the context of a Member State-driven process, it was the decision of the Committee whether to hold regional consultations, and that should not be left to the decision of the International Bureau. The Delegation would not adopt the conclusion of the Chairman.

262. The Delegation of Serbia and Montenegro noted that, in accordance with WIPO General Rule of Procedure 14(1), in the course of debate any delegation might raise a point of order, but might not speak at the same time on the substance of the matter under discussion.

263. The Delegation of Zambia stressed the importance of a spirit of compromise, and cautioned that delegations should not adopt an inflexible approach that would be difficult to reverse in future. Only one or two delegations had expressed serious reservations about the convening of regional consultation meetings instead of an intersessional meeting to be held in

Geneva. A number of African delegations had expressly and separately expressed their support for regional consultations. It was not clear why the issue of regional meetings should delay progress in the Committee, when significant compromises had been reached on substantive issues and the holding of regional meetings would not in any event have major repercussions for the issues at stake. The Delegation called for a reasoned approach, not based on extraneous agendas.

264. The Chairman stated that no possible text for conclusions of the meeting could satisfy all delegations. He confirmed that the conclusions presented to the Committee, as amended to add flexibility for holding regional and other types of consultations, would be proposed for inclusion in the report as the conclusions of the Chairman.

265. The Delegation of India, raising a point of order, noted that while the WIPO Rules of Procedure existed to guide the deliberations of WIPO bodies, the Member States had always adopted a more helpful, flexible and collegial approach, not having recourse to the Rules. If a rigid approach were to be adopted, the Delegate noted that the Rules would provide that the Committee could not re-elect its Chairman in 'back to back' sessions.

266. The Legal Counsel informed the Members that, while the reference to the provision in the Rules concerning re-election of a Chairman in consecutive sessions was correct, the Committee had itself in an earlier session decided to derogate from that rule.

267. The Delegation of India stated that it could not recall a vote or consensus decision to derogate from such a rule.

268. The Legal Counsel clarified that the Committee had, in its Second Session, adopted a Special Rule of Procedure derogating from the rule on re-election of Chairmen.

269. The Delegation of India stated that decisions taken by previous sessions of the Committee could not bind subsequent sessions.

270. The Secretariat stated that, at its Second Session, the Committee had re-elected its Chairman and Vice-chairs, and at the same time adopted a Special Rule of Procedure, permitting re-election. Each WIPO Committee could adopt Special Rules of Procedure that continued from one Committee session to the next unless subsequently modified.

271. The Delegation of India expressed dissatisfaction that one session of a Committee could bind future sessions, unless the Rules of Procedure were officially changed, or the decision to deviate from the rules was brought to the attention of Members at each subsequent session.

272. The Chairman noted that delegations had demonstrated flexibility to bring about progress on the substance of discussions, although there was not consensus on the technical and procedural steps forward. Although many Members indicated support for the conclusions proposed by the Chairman, other Members could not, for different reasons, agree. In the absence of consensus on a single set of conclusions, the Report should include only the conclusions of the Chairman.

273. The Delegation of Brazil, raising a point of order, stated that the Rules of Procedure governed the powers of the Chairman, and there was no provision of the Rules that permitted the Chairman to impose decisions upon the Committee. Any conclusions by the Chairman

included in the report, and that were not endorsed by the Committee, could not bind Members.

274. The Delegation of India observed that it was necessary to resolve the issue concerning re-election of the Chairman before the Committee could adopt the conclusions of the Chairman. If the Committee followed the principle of consensus in adopting its conclusions, then it would not matter if the Chairman had been elected in accordance with the Rules of Procedure, because consensus would smooth over differences. However, if the Committee departed from the rule of consensus, the Rules of Procedure would then become important. If the Delegation of Finland, in its capacity as Chairman, was to propose its conclusions, and the Committee accepted these as the conclusions of the Chairman, that would give special precedence to the views of one delegation over all others.

275. The Chairman noted that several delegations were asking for the floor, but time constraints made it necessary to conclude the session without further debate. He asked those delegations that could not support his draft conclusions to raise their nameplates, and noted that the Delegations of Argentina, Brazil, Egypt, India and the Islamic Republic of Iran were unable to accept those conclusions. A substantial majority of Members indicated their support of the conclusions of the Chairman. The Chairman noted that the Committee had to respect the opinion of the majority and, as consensus could not be reached on any set of conclusions within the time available, the conclusions of the Chairman would be included in the report. The Chairman expressed deep regret at the spirit in which the Committee's discussions ended, particularly in view of the flexibility and willingness shown by its Members to reach agreement on the substantive issues.

CONCLUSIONS BY THE CHAIRMAN OF THE STANDING COMMITTEE

A. BROADCASTING ORGANIZATIONS

1. *Documents to be prepared*

– a second revised version of the Consolidated Text will be prepared by the Chairman of the present session of the Standing Committee;

– a working paper on alternative non-mandatory solutions to the protection of webcasting organizations, including simulcasting organizations, will be prepared to accompany the second revised version;

2. *Regional and other informal consultations*

– regional consultations and other types of informal consultation meetings will be organized by the International Bureau, as requested by the Member States;

3. *Thirteenth Session of the Standing Committee*

– the next session of the Standing Committee will take into account the progress made in the regional consultations and other types of informal consultation meetings;

– the Committee will, in light of the results of the regional consultations and other types of informal consultations, consider the second revised version of the Consolidated Text, and examine the working paper on alternative solutions on the protection of webcasting organizations.

B. EXCEPTIONS AND LIMITATIONS TO COPYRIGHT AND RELATED RIGHTS

– an agenda item on exceptions and limitations for the purposes of education, libraries and disabled persons will be placed on the agenda of the Thirteenth Session of the Standing Committee.

CLOSING OF THE SESSION

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

277. The Chairman closed the session.

[Annex follows]

ANNEXE/ANNEX

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

I. MEMBRES/MEMBERS

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

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

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ARGENTINE/ARGENTINA

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AUSTRALIE/AUSTRALIA

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AZERBAÏDJAN/AZERBAIJAN

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SINGAPOUR/SINGAPORE

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URUGUAY

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ZAMBIE/ZAMBIA

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NON-STATE MEMBERS

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

Sami SUNILA, Administrator, Unit E4 – Copyright and Neighbouring Rights, DG Internal Market, Brussels

Luis FERRÃO, Principal Administrator, DG Information Society, Luxembourg

III. ORGANISATIONS INTERGOUVERNEMENTALES/
INTERGOVERNMENTAL ORGANIZATIONS

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

John MYERS, Media Specialist (Media, Culture, Graphical; Postal and Other Communication Services), Sectoral Activities Department, Geneva

Kate BRADY (Ms.), Intern, Sectoral Activities Department, Geneva

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

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

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

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

ORGANISATION MÉTÉOROLOGIQUE MONDIALE (OMM)/WORLD METEOROLOGICAL ORGANIZATION (WMO)

Iwona RUMMEL-BULSKA (Mrs.), Senior Legal Adviser, Geneva

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

Hannu WAGER, Counsellor, Intellectual Property Division, Geneva

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ORGANISATION MONDIALE DE LA SANTE (OMS)/WORLD HEALTH ORGANIZATION (WHO)

David BRAMLEY, Technical Officer, Copyright, Geneva

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NON-GOVERNMENTAL ORGANIZATIONS

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American Bar Association (ABA): Katherine SPELMAN (Ms.) (Liaison Officer, Piper Rudnick LLP, San Francisco, United States of America)

Arab Broadcasting Union (ASBU): Lyes BELARIBI (Director, Arab News and Programmes Exchange Center, Algiers)

Asociación Argentina de Intérpretes (AADI): Gustavo SÁENZ PAZ (Director General, Buenos Aires); Nelson ÁVILA (Jefe, Departamento Legal, Buenos Aires)

Associação Brasileira de Emisoras de Rádio e Televisão (ABERT): Daniel PIMENTEL SLAVIEIRO (Vice-President, Brasilia); Alexandre KRUEL JOBIM (General Counsel, Brasilia)

Association canadienne des télécommunications par câble/Canadian Cable Telecommunications Association: Gerald KERR-WILSON (Vice-President, Legal Affairs, Ottawa)

Association des organisations européennes d'artistes interprètes (AEPO)/Association of European Performers' Organisations (AEPO): Xavier BLANC (General Secretary, Brussels); Marie GYBELS (Mrs.) (Head of Office, Brussels)

Association européenne des radios (AER)/Association of European Radios (AER)
Tom RIVERS (Legal Adviser, Brussels)

Association internationale de radiodiffusion (AIR)/International Association of Broadcasting (IAB): Andrés LERENA (Presidente, Comité de Derecho de Autor, Asesor Legal de la Asociación Nacional de Broadcasters Uruguayos (ANDEBU), Montevideo); Edmundo REBORA (Member, Association internationale de radiodiffusion (AIR)/International Association of Broadcasting (IAB), Buenos Aires)

Association internationale des auteurs de l'audiovisuel (AIDAA)/International Association of Audio-Visual Writers and Directors (AIDAA): João CORREA (secrétaire général, Bruxelles)

British Copyright Council: Florian KOEMPEL (Legal Advisor, London)

Bureau international des sociétés gérant les droits d'enregistrement et de reproduction mécanique (BIEM)/International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM): Willem A. WANROOIJ (Public Affairs, BUMA/STEMRA, The Hague)

Caribbean Broadcasting Union (CBU): Victor FERNANDES (President, Barbados), Jeffrey COZIER (Secretary General, Barbados),

Center for Performers' Rights Administration (CPRA): Yoshiji NAKAMURA (Director, Executive Committee, Tokyo)

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

Center for International Environmental Law (CIEL): Maria Julia OLIVA (Ms.) (Director - IP and SD Project, Geneva), Andrew SCHMALZ (Geneva)

Civil Society Coalition (CSC): Manon RESS (Ms.) (Secretariat, Washington, D.C.); Thiru BALASUBRAMANIAM (Geneva, Switzerland); Teresa HACKETT (Dublin); Rufus POLLOCK (Director, Geneva)

Confédération internationale des sociétés d'auteurs et compositeurs (CISAC)/International Confederation of Societies of Authors and Composers (CISAC): Fabienne HERENBERG (Mrs.) (Société des auteurs et compositeurs de musique (SACEM), Paris)

Co-ordinating Council of Audiovisual Archives Associations (CCAAA): Anselm Crispin JEWITT (Convenor, London)

Copyright Research and Information Center (CRIC): Ryohei ISHII, (Senior Associate Director, Copyright Division, Japan Broadcasting Corporation, Tokyo); Samuel Shu MASUYAMA, (Director, Legal and Research Department, Centre for Performers' Rights Administrations (CPRA), Japan Council of Performers' Organizations (GEIDANKYO), Tokyo)

Digital Media Association (DiMA): Seth GREENSTEIN, (Counsel, Washington, D.C.); Jonathan POTTER, (Executive Director, Washington, D.C.)

Electronic Frontier Foundation (EFF): Cory DOCTOROW (European Affairs Coordinator, London); Pedro Pablo MENDIZABAL SIMONETTI (Lima)

European Digital Rights (EDRi): Ville OKSANEN (Co-Chairman, IP-Working Group, Helsinki); Ian BROWN (Member of the Board, London); Vera FRANZ (Ms.) (Program Manager, London); Cornelia KUTTERE (Mrs.) (Senior Legal Advisor, Brussels), Volker GRASSMUCK (Researcher, Berlin)

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

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

Fédération internationale des associations de producteurs de films (FIAPF)/International Federation of Film Producers Associations (FIAPF): Bertrand MOULLIER (directeur général, Paris), Shira PERLMUTTER (Ms.) (Advisor, Time-Warner, New York), Santiago MEDIANO (Legal Advisor, Madrid), John BARRACK (National Vice President, Industrial Relations and Counsel, CFPTA, Toronto)

Fédération internationale de l'industrie phonographique (IFPI)/International Federation of the Phonographic Industry (IFPI): Ute DECKER (Ms.) (Senior Legal Adviser, Legal Policy and Regulatory Affairs Department, London); Mark SIMPSON (Senior Legal Adviser, Legal Policy and Regulatory Affairs Department, London), Brigitte LINDNER (Ms.) (Counsel, IFPI Switzerland, London), Neil TURKEWITZ (Executive Vice President International, Washington D.C.)

Fédération internationale des acteurs (FIA)/International Federation of Actors (FIA): Dominick LUQUER (General Secretary, London); Bjørn HØBERG-PETERSEN (Legal Counsel, Copenhagen); Bianca BUSUIOC (Mrs.) (Deputy Secretary General, Brussels); Ken THOMPSON (Director, Public Policy, Toronto)

Fédération internationale des associations de bibliothécaires et des bibliothèques (FIAB)/International Federation of Library Associations and Institutions (IFLA): Jarka LOOKS (Ms.) (Vice-Director and Head of the Library, Swiss Institute of Comparative Law, Lausanne)

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

Federation internationale des autorites hippiques de courses au galop/International Federation of Horseracing Authorities (IFHA): Maurits BRUGGINK (Executive Director, Paris)

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

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

Fédération internationale des organismes gérant les droits de reproduction (IFRRO)/
International Federation of Reproduction Rights Organizations (IFRRO):
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Fédération internationale de la vidéo/International Video Federation (IVF): Ted SHAPIRO
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Groupement européen des sociétés de gestion des droits des artistes interprètes
(ARTIS GEIE)/European Group Representing Organizations for the Collective
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Independent Film and Television Alliance (IFTA): Lawrence SAFIR (Vice President -
European Affairs, Los Angeles)

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International Music Managers Forum (IMMF): Nick ASHTON-HART (Executive Director,
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Japan Council of Performers Organizations: Kazuo SHIINA (Director, Executive Committee,
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Licensing Executives Society (LES): Lamine MOUA KI-BENAIM (Geneva)

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National Association of Commercial Broadcasters in Japan (NAB-Japan): Seijiro
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Radio and Television Supreme Council: Emine Müjde AVCIOGLU (Mrs.) (Legal Advisor, Supreme Council, Ankara),

Union de radiodiffusion Asie-Pacifique (ABU)/Asia-Pacific Broadcasting Union (ABU): Maloli MANALASTAS (Ms.) (Vice-President, Government, Corporate Affairs and PR, ABS-CBN Broadcasting Corporation, Indonesia); Atsushi IIZUKA (Principal Program Director, Secretary, Copyright Center, Multimedia Development Department, Japan Broadcasting Association); Fernand ALBERTO (Legal Officer, Kuala Lumpur)

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

Union for the Public Domain: Michelle CHILDS (Ms.) (Consultant, New Haven, Connecticut), David TANNENBAUM (Coordinator, New Haven, Connecticut), Shyamkrishna BALGANESH (Consultant/Advisor, Oxford)

Union international des éditeurs (UIE)/International Publishers Association (IPA): Jens BAMMEL (Secretary General, Geneva); Francis FARLEY-CHEVRIER (Montreal)

Union mondiale des aveugles/World Blind Union (WBU): David MANN (Campaigns Officer, Belfast)

Union Network International–Media and Entertainment International (UNI-MEI): Johannes STUDINGER (Deputy Director, Brussels)

Union of National Broadcasting in Africa (URTNA): Hezekiel OIRA (Corporation Secretary, Kenyan Broadcasting Corporation, Nairobi)

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VI. BUREAU INTERNATIONAL DE L'ORGANISATION MONDIALE DE LA
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