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WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA

E

STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

Seventeenth Session
Geneva, November 3 to 7, 2008

REPORT

approved by the Committee

1. The Standing Committee on Copyright and Related Rights (hereinafter referred to as the “Standing Committee,” the “Committee” or the “SCCR”) held its seventeenth session in Geneva from November 3 to 7, 2008.
2. The following Member States of the World Intellectual Property Organization (WIPO) and/or members of the Berne Union for the Protection of Literary and Artistic Works were represented in the meeting: Afghanistan, Albania, Algeria, Argentina, Australia, Austria, Barbados, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Canada, Chile, China, Colombia, Cuba, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, Germany, Finland, France, Ghana, Greece, Guatemala, Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Italy, Jamaica, Japan, Kenya, Lebanon, Lithuania, Luxemburg, Morocco, Mauritius, Mexico, Monaco, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Slovenia, Singapore, South Africa, Sudan, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, Thailand, The former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, United Kingdom, United States of America, Uruguay, Zambia, Zimbabwe (78).
3. The European Community (EC) participated in the meeting in a member capacity.

4. The following intergovernmental organizations took part in the meeting in an observer capacity: African Union (AU), Arab Broadcasting Union (ASBU), Third World Network Berhad (TWN), and World Trade Organization (WTO) (4).

5. The following non-governmental organizations took part in the meeting as observers: Actors, Interpreting Artists Committee (CSAI), Asia-Pacific Broadcasting Union (ABU), Association of Commercial Television in Europe (ACT), Association of European Performers' Organisations (AEPO-ARTIS), Association IQSensato (IQSensato), Central and Eastern European Copyright Alliance (CEECA), Centre for Performers' Rights Administrations (CPRA) of GEIDANKYO, Consumers International (CI), Co-ordinating Council of Audiovisual Archives Associations (CCAAA), Copyright Research and Information Center (CRIC), Electronic Frontier Foundation (EFF), Electronic Information for Libraries (eIFL.net), European Broadcasting Union (EBU), European Cable Communications Association (ECCA), European Digital Rights (EDRi), European Federation of Joint Management Societies of Producers for Private Audiovisual Copying (EUROCOPYA), European Visual Artists (EVA), German Association for the Protection of Industrial Property and Copyright Law (GRUR), Ibero-Latin-American Federation of Performers (FILAIIE), Independent Film and Television Alliance (IFTA), International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), International Center for Trade and Sustainable Development (ICTSD), International Chamber of Commerce (ICC), International Confederation of Societies of Authors and Composers (CISAC), International Federation of Actors (FIA), International Federation of Associations of Film Distributors (FIAD), International Federation of Film Producers Associations (FIAPF), International Federation of Journalists (IFJ), International Federation of Library Associations and Institutions (IFLA), International Federation of Musicians (FIM), International Federation of Reproduction Rights Organizations (IFRRO), International Federation of the Phonographic Industry (IFPI), International Group of Scientific, Technical and Medical Publishers (STM), International Intellectual Property Alliance (IIPA), International Literary and Artistic Association (ALAI), International Music Managers Forum (IMMF), International Publishers Association (IPA), International Video Federation (IVF), Knowledge Ecology International, Inc. (KEI), Library Copyright Alliance (LCA), Max-Planck-Institute for Intellectual Property, Competition and Tax Law (MPI), National Association of Commercial Broadcasters in Japan (NAB-Japan), North American Broadcasters Association (NABA), Public Knowledge, Union of National Broadcasting in Africa (URTNA), World Blind Union (WBU) (46).

OPENING OF THE SESSION

6. The Director General welcomed the delegates and observers to the seventeenth session of the Standing Committee.

7. The Chair of the Committee, Mr. Jukka Liedes of Finland, noted that elections for the positions of Chair and Vice Chairs for 2008 had taken place in the March session of the Committee.

ADOPTION OF THE AGENDA OF THE SEVENTEENTH SESSION

8. The Committee adopted the Agenda of the Session as contained in document SCCR/17/1.

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

9. The Chair noted that the draft Report for the Session, which had been held on March 10 to 12, 2008, had been published on September 5, 2008.

10. The Secretary of the Standing Committee noted that the English version of the draft Report had been published on September 5, 2008, but the French and Spanish versions had been published in the week of November 3, 2008. Members were requested to submit, within one week, by email to *copyright.mail@wipo.int*, any corrections of their own statements, and a revised version of the draft Report would be issued by the Secretariat.

11. The Chair noted that with this reservation the Standing Committee had adopted the Report and opened the floor for general observations.

12. The Delegation of France, on behalf of the European Community and its 27 Member States, thanked the Secretariat for organizing the informative sessions on existing and future studies on exceptions and limitations and the protection of audiovisual performances, which would enrich the Committee's future work. It was appropriate to continue with discussions on pending issues, namely the protection of audiovisual performances and the protection of broadcasting organizations. With respect to audiovisual performances, appreciation was expressed for the organization of seminars at national and regional levels, and for the factual document summarizing the outcomes of the organized activities and list of positions taken by Members. The issue remained important, and it was important to find a way to move forward. It was recalled that the issue of the protection of broadcasting organizations had been the subject of in-depth discussions, and the time had come to take action that would lead towards a consensus enabling the grant of satisfactory protection to broadcasting organizations at the international level. The analysis of the main positions and divergences among Members by the Chair under the mandate of the General Assembly would enable progress in discussions towards a consensus. The European Community and its Member States had drafted a document setting out its justifications on subjects it had put forward for the Committee's work at the Session in March 2008, in response to Members' questions. The subjects were the artist's resale right, orphan works, collective management and applicable law, and the majority had been discussed at the 8th Session of the Committee, and referred to in a presentation by the Secretariat of Document SCCR/8/2 entitled 'A short description of possible subjects for future review by the Standing Committee in a positive and constructive spirit.

13. The Delegation of Bangladesh, on behalf of the least developed countries, thanked the Secretariat for organizing a briefing on Committee matters for least developed countries, which had helped to identify common positions and concerns. In a general sense, least developed countries were prepared to continue to participate in the Committee in the areas of exceptions and limitations, audiovisual performances and protection of broadcasting and cablecasting organizations. Appreciation was given for the Informative Sessions on exceptions and limitations and audiovisual performances. In the context of the planned study

on exceptions and limitations in the field of education, there was a need to take account of the difficult situation of least developed countries in this context. No formal position was taken on the World Blind Union's (WBU) proposal for a WIPO Treaty on Improved Access for Blind, Visually Impaired and Other Reading Disabled Persons (the WBU Proposal), which had just been received. However, it was an important issue that should be given due attention by the Committee, particularly as 90% of visually impaired persons lived in poorer and least developed countries, and limitations and exceptions to assist those persons was a pressing issue. With respect to the protection of audiovisual performers, it was hoped that the Committee's deliberations would take account of the welfare of performers from least developed countries. With respect to the protection of broadcasting organizations, it was noted that the Committee could not make substantive progress on the area, although the least developed countries were prepared to remain engaged on the issue. It was noted that the Chair had put forward several options for progress on the issue, and it was requested that these options be further discussed and clarified with respect to their scope and any envisaged timeline. A concern was also expressed about the late issue of documents and the lack of documents translated into French, which made it more difficult for small delegations of least developed countries to prepare for meetings. Timely issuance of documents, including in French, was requested in future.

14. The Delegation of Mexico expressed satisfaction at the election of Mr. Francis Gurry as Director General and, in light of the Director General's accession speech, it emphasized that there was an urgent need to strengthen copyright and related rights activities within the Organization's work agenda in light of the important role played by the copyright industries in the social and economic development of countries. Economic studies undertaken in Mexico with the cooperation of the Organization indicated that the contribution made by the creative industries in Mexico constituted 5.1% of GDP and 11.02% of national employment, which could be compared to the contribution made by other industries such as mining and agriculture. Technological progress and economic globalization raised major challenges for intellectual property in general, and copyright and related rights in particular. While the Internet and information technology provided opportunities for the preservation and revitalization of cultural and material heritage, they also gave rise to the unauthorized use of works, interpretations and performances without payment of royalties or remuneration. In light of the major challenges raised by digital technology, the copyright system should be strengthened, and it was hoped that the Committee's discussions would lead to specific outcomes in order to move forward to adopting an international treaty on the protection of audiovisual performances and an international treaty on the protection of broadcasting organizations.

15. The Delegation of Pakistan, speaking on general issues on behalf of the Asian Group, expressed appreciation for the Chair's dedication, patience and hard work in the Committee, as well as for the preparation of the studies and the information sessions, which helped to promote better understanding of the issues before the Committee. The Committee's work should be based on the principles of transparency, clarity, inclusiveness, balance and flexibility, taking into account the concerns of all members. With respect to future work on the broadcasting treaty, a signal-based approach should be the basis for any future norm setting activities regarding traditional broadcasting and cablecasting organizations. Instead of making a choice between the three options presented in the Chair's paper, there was a need for further studies on the issues at stake to promote better understanding of the issues among members. The item on the protection of broadcasting organizations should be maintained on the Committee's agenda for future sessions. With respect to the issue of limitations and exceptions, and particularly with reference to improved access to the blind, visually impaired

and persons with reading disabilities, there was an urgent need for concrete and immediate steps including formal initiation of discussions by the Standing Committee. The Secretariat was requested to undertake an in-depth analysis of the issues to help members effectively address the accessibility challenges for visually impaired persons. With respect to audiovisual performances, appreciation was expressed for the initiatives taken and their continuation. The Standing Committee should give equal emphasis and adequate time for all substantive issues on its agenda in future.

LIMITATIONS AND EXCEPTIONS

16. The Chair introduced the issue of limitations and exceptions, which had been the subject of information gathering and study. In the conclusions of the previous session, the Committee had referred to the proposal by the Delegations of Brazil, Chile, Nicaragua and Uruguay, elaborating on an earlier proposal by the Delegation of Chile on exceptions and limitations, and had recorded support by some members in whole or in part for the proposal, while other members had supported specific elements in the proposal. More time had been given to the Standing Committee to study the proposal. There had been reference to the need for rapid action to improve the access of visually impaired persons to protected works. The conclusions of the earlier session had also included a request to the Secretariat to make a study on exceptions and limitations for the benefit of education activities including distance education and the cross-border aspects of it, and that study was forthcoming. The Secretariat had also been requested to organize an Informative Session for the current session on existing and forthcoming studies, which had taken place. The conclusions of the earlier session had also stated that the Committee would consider more detailed work on the item at its next session, including the organization of national and regional seminars. Those conclusions guided the Committee's current work. The Chair noted that the WIPO Secretariat had been engaged in substantive preparatory work on limitations and exceptions, including commissioning the four studies that had been presented to the Committee. Four questions were presented to the Standing Committee concerning: (i) what comments could be submitted on the studies to date, (ii) what thoughts members may have on other possible concrete steps to continue to provide a basis for substantive consideration of limitations and exceptions, (iii) what analysis or opinions members could offer on the substantive issue of limitations and exceptions, and (iv) what thoughts members could offer on future work plans on this issue, including whether the item of limitations should be on the Committee's agenda and what intensity of work should be committed to this item, given that other work projects commenced earlier still remained on the agenda.

17. The Delegation of Chile, speaking on behalf of the Delegations of Brazil, Chile, Nicaragua and Uruguay, had submitted a proposal on limitations and exceptions, in document SCCR/17/2. The Delegation emphasized the importance of discussions in the Committee, which could have direct impact on the quality of life of millions of people around the world, first, by establishing conditions that would stimulate and promote creativity, and also by establishing an intellectual property system that would contain clear rules that would permit and guarantee broad access to cultural goods. The Delegation would work with WIPO to take concrete steps to achieve those aims. Satisfaction was expressed with the broad support given by members to the proposal made by the Delegations of Chile, Brazil and Uruguay at the last session of the Committee, and its inclusion on the agenda was welcomed. Such analysis was an important part of the intellectual property system and could not be omitted from the discussion, which strengthened the work of the Standing Committee. The WIPO Secretariat and the presenters of the Informative Session were congratulated for their excellent studies,

which contributed to an informative and detailed discussion. Document SCCR/17/2 proposed a progressive work plan including the Informative Session on limitations and exceptions, which had been held, as well as a study on limitations and exceptions for information purposes. The second stage of work proposed in document SCCR/17/2 suggested that the Standing Committee should continue to exchange information and take concrete steps to research the existence and scope of international intellectual property systems. The Standing Committee should request the WIPO Secretariat to draft a questionnaire on limitations and exceptions to research information on national limitations and exceptions, distinct from the studies already done. The questionnaire would provide the advantage of updated information that would enable the Standing Committee to more easily understand national limitations and exceptions. Questionnaires were not new for WIPO. One example was carried out in 2002, when the Standing Committee on Trademark Law requested the WIPO Secretariat to carry out a survey of trademark law and practice (SCT/9/3), which was examined at the 9th session of that Committee and disseminated by electronic forms inviting members to submit information. In addition, two questionnaires were distributed to research information on legislative practice in industrial designs (SCT/17/6), entitled ‘Questionnaire on the Legislation and Practice in Industrial Designs’ parts I and II. It was hoped that such successful researches could be repeated in the Standing Committee on Copyright and Related Rights. The Delegation offered to share its experience in drafting a questionnaire on limitations and exceptions in the context of the Asia Pacific Economic Cooperation (APEC) forum in 2004. The APEC questionnaire was publicly accessible at: www/apec.com, and had been adopted by APEC countries, and it was hoped that the analysis of the results would shortly be published. The APEC questionnaire had included a question on exceptions and limitations for educational purposes, libraries and facilitating access for disabled persons. The Delegation hoped to receive support for its initiative from the Standing Committee. With respect to the WBU Proposal, the Delegation noted that it highly valued the WBU’s work at the national level on this issue, and considered its Proposal fully compatible with the Committee’s deliberations on limitations and exceptions as well as with the Delegation’s proposal in document SCCR/17/2. Visually impaired persons were unjustly affected in their ability to access culture, and support was expressed for a WIPO treaty on access for disabled persons. The WBU Proposal could serve as a precedent for this purpose and, while it was currently available in French, English and Spanish, it would be welcomed if the Secretariat could make it available in all the working languages of the Organization. With respect to the protection of broadcasting organizations, appreciation was expressed for the unofficial document prepared by the Chair, which correctly summarized members’ positions and progress made. In view of the broad differences of view which remained on protection of broadcasting organizations, the decision to convene a diplomatic conference on this issue was still distant. As stated in document WO/GA/36/5, such a decision should be adopted only once there was agreement on the objectives, the specific scope of application and the object of protection.

18. The Delegation of Egypt endorsed the proposal made by the Delegation of Chile together with the Delegations of Brazil, Nicaragua and Uruguay concerning limitations and exceptions. The issue of limitations and exceptions should be maintained on the Committee’s agenda in order to move forward. The Informative Sessions had been important and interesting, providing a large amount of information to enable a more mature discussion of limitations and exceptions. For example, an excellent and comprehensive presentation had been made by Professor Sam Ricketson on exceptions and limitations in international copyright instruments. The Committee needed to receive information on limitations and exceptions in domestic legislation, and support was given to the proposal by the Delegation of Chile for the WIPO Secretariat to be requested to prepare a questionnaire to carry out a

comparative study of limitations and exceptions, which related to all aspects of intellectual property beyond copyright. Two tiers of inquiry were required to meet the request for information, concerning limitations and exceptions in international treaties, and concerning limitations and exceptions in domestic legislation. The inquiry should look at whether domestic limitations and exceptions were broader than provided at the international level and, if so, what were the reasons for the difference, whether political, economic or social. While there was a need to develop an international treaty, such a study should be carried out before the next session of the Standing Committee.

19. The Delegation of Cuba, speaking on behalf of GRULAC, thanked the WIPO Secretariat for its excellent Informative Session on limitations and exceptions, and endorsed the proposal for a questionnaire on the subject, which was not a new procedure for the WIPO Secretariat to conduct.

20. The Delegation of Uruguay thanked the panelists for their useful presentations at the informative sessions, and indicated its commitment to collaborate to achieve outcomes in this area. It supported the statements made by the Delegation of Cuba on behalf of GRULAC and the proposal made by the Delegation of Chile and suggested that the proposed questionnaire concerning limitations and exceptions should delve into the rationale of various national laws, in order to develop general principles in the field. The issue of limitations and exceptions was of major importance for its country, in particular because of the growing domestic software industry, and it was important to analyze the outcomes of the study for that industry. The Committee should move forward to finding a rapid solution to the problems for users of copyright and related rights.

21. The Delegation of Guatemala endorsed the statement made by the Delegation of Cuba on behalf of GRULAC, and thanked the WIPO Secretariat for the informative sessions which had provided a solid foundation for an exchange of information in order to develop understanding of the practical problems faced in the area of exceptions and limitations, and possibly to develop a framework of flexibilities to address those problems. The Committee had benefited from an objective analysis of national experiences, which had enabled it to identify trends and practices in some Member States. The Committee had also been able to identify the needs that had emerged as a result of technological developments, and how to address those needs appropriately. The Committee also had the opportunity to look at the difficulties faced by visually impaired persons in accessing information, and the role played by limitations and exceptions in enabling this access. The WBU Proposal provided an important avenue to explore for this purpose. The informative sessions had given important progress to the Committee's work, and it should now maintain the momentum. The proposal made by the Delegation of Chile, together with the Delegations of Brazil, Nicaragua and Uruguay had provided ideas and an outline for practical work, to which the questionnaire had been added. The Delegation expressed support for undertaking the questionnaire, which would give the Committee an inventory of national practices with which to identify the scope of limitations and exceptions and gaps that might exist, and where laws needed to be developed on an international basis.

22. The Delegation of El Salvador supported the proposal made by the Delegation of Chile, together with other Latin American members, which was extremely important for the Committee's work. The questionnaire would make a significant contribution towards unifying the application criteria on limitations and exceptions. Exceptions and limitations were provided for in El Salvador's laws, but the outcome of such an exercise could be used to

improve such national laws. The Delegation supported the statement made by the Delegation of Cuba on behalf of GRULAC.

23. The Delegation of India stated that the expert presentations made at the informative session had given Members a useful opportunity to gain insight through efforts made by the WIPO Secretariat to study limitations and exceptions. Support was expressed for an enhanced focus on limitations and exceptions in the Committee's work, which would bring to the fore all dimensions of the issue including the public interest, access to information, and cultural and social needs. At the previous session of the Committee, several delegations had highlighted the need to speed up action to facilitate access for visually impaired persons to copyright works. With respect to the WBU Proposal, the Delegation was in principle open to discuss the subject in the context of limitations and exceptions.

24. The Delegation of France, speaking on behalf of the European Community and its 27 Member States, thanked the Secretariat for its studies on limitations and exceptions, notably the study on limitations and exceptions for libraries and archives, which was comprehensive and required in-depth review, and looked forward to receiving the study regarding limitations and exceptions for education purposes including long distance learning and its cross-border aspects. Copyright and related rights constituted a balance between rightsholders' interests and the public interest, and the grant of such rights required flexibilities to enable countries to address a variety of national situations. In that regard, the three-step test was important. The countries of the European Community sought to balance the interests between efficient protection of copyright and related rights, in order to ensure continued creativity, and the justified rights of the public, and had accumulated great experience in the field of exceptions and limitations. European Union legislation such as, for example, the Directive on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society, enabled such a balanced solution. At the Committee's last session, the Delegation of Chile and others had submitted a proposal on limitations and exceptions, putting forward three areas for future work. Support was expressed for the first such area, to enable information to be gathered on national systems providing for limitations and exceptions. However, the Delegation would prefer if the second area, determining the scope of analysis, should be less limited, and it suggested that the scope should be "to analyze the exceptions and limitations in national systems". Such wording would allow better understanding through national laws and practices in conducting the work program proposed by the Delegations of Brazil, Chile, Nicaragua and Uruguay at the last session of the Committee. It supported the first two phases of the program, to gather information on existing legal regimes on an international scale for exceptions and limitations and on national systems and their relationships with contractual practices and the management of rights in the digital environment. With respect to the third phase, it would also be useful to study the justification for limitations and exceptions in national models. The focus should be on the exchange of information on the existence and scope and nature of limitations and exceptions at the national and international levels. Therefore, the Delegation could not support the final phase of the proposed work program. It was crucial to maintain the balance in existing international treaties dealing with exceptions and limitations.

25. The Delegation of China thanked the WIPO Secretariat for its work on limitations and exceptions, which had been comprehensive, interesting, useful and relevant for future work. Exceptions and limitations were an important topic to enable a balance between rights and protecting public interests, such as in education. The agenda item on limitations and exceptions should be a priority, and the Delegation would actively engage in the debate. It hoped that a work program could be shortly agreed and, under the Chair's leadership,

effective discussions proceed. The proposal made by the Delegation of Chile was viable and feasible. With respect to the WBU Proposal, the Delegation noted that attention was given to the issue of visually impaired persons in China's copyright legislation, which contained limitations and exceptions in favor of the visually impaired. As the WBU Proposal had recently been received, time would be required to study it, but sufficient attention should be given to it.

26. The Delegation of Algeria, on behalf of the African Group, expressed support for the issue of limitations and exceptions being on the agenda of the Committee. Exceptions and limitations were vital to maintain the balance between rightsholders and the public interest. It supported a flexible, non-limited approach, taking account of existing international treaties that gave leeway to national legislatures to fix limitations and exceptions in the context of local cultural and economic conditions. It appreciated the WBU's initiative, which would be reviewed, and it thanked the Secretariat for its studies on limitations and exceptions. Further studies would be useful, including on the issue of limitations and exceptions in developing countries, and on their use for educational purposes and long distance learning including its cross-border aspects.

27. The Delegation of Indonesia remarked that the informative sessions had been very important for developing common understanding of the issues. It supported further discussion of the proposal made by the Delegation of Chile together with the Delegations of Brazil, Nicaragua and Uruguay, which was particularly critical given that limitations and exceptions had substantial impact on users' rights in education and among the most vulnerable persons in society. It also welcomed discussions on access for visually impaired persons and the barriers they faced in accessing copyright works. These barriers existed not only in the developing world, where reportedly some 90 per cent of all visually impaired persons resided, but also in developed countries, where only less than 5 per cent of published books were accessible to visually impaired persons. It supported a study on exceptions and limitations for educational purposes and long distance learning including its cross-border aspects.

28. The Delegation of Argentina supported the statement made the Delegation of Cuba on behalf of GRULAC, and in particular, expressed interest in the issue of limitations and exceptions as it was closely linked to the general principles of the WIPO Development Agenda. With respect to access to copyright works by visually impaired persons, it noted that Argentina had enacted Law No.11.723 on intellectual property, which provided for free reproduction and distribution of scientific and literary works in special formats for visually impaired persons or other persons with perception disabilities.

29. The Delegation of New Zealand endorsed the recommendations made in the study by Mrs. Judith Sullivan on the access of visually impaired persons to copyright works and encouraged further discussion of the issue and work by the Committee, especially on the import and export of accessible formats. The WBU Proposal was very useful for discussion; however, more time was needed to study it. The Committee's discussions should not focus only on norm setting, but should also include alternatives to exceptions and limitations, such as licensing and development of trust between stakeholders. The issue of limitations and exceptions in favor of visually impaired persons could be considered simultaneously with other issues.

30. The Delegation of Brazil stated that the issue of exceptions and limitations was of the utmost importance, and the Committee should intensify its work following the step by step

approach set out in the proposal made by the Delegation of Chile, which provided valuable parameters for future work. It supported the statements made by the Delegation of Chile and the Delegation of Cuba on behalf of GRULAC. Exceptions and limitations were directly related to development and in line with the WIPO Development Agenda, with the object of promoting access to knowledge. It commended the WBU for bringing its valuable and indispensable draft treaty proposal to the attention of the Committee, and the WBU Proposal deserved the Committee's attention. Members should be dedicated to an effective discussion on limitations and exceptions. In accordance with the proposal made by the Delegation of Chile, a feasible next step would be to conduct a questionnaire among Member States and compile the responses for distribution at the next session. The questionnaire would be a valuable exercise to move the Standing Committee's work forward on the issue of exceptions and limitations.

31. The Delegation of Cuba stated that limitations and exceptions were a priority for the Committee, and supported progress on the exchange of information and studying national legislation. Support was given for a study as proposed by the Delegation of Chile together with the Delegations of Brazil, Nicaragua and Uruguay. The existing disparity between national legislative provisions regulating exceptions and limitations to economic rights of authors and other rightsholders showed great differences and made it difficult to access knowledge. Appreciation was given for the WBU Proposal, which was compatible with other proposals. The National Association for the Blind in Cuba had participated in the Latin American Blind Union, and it was extremely important to harmonize limitations and exceptions in favor of blind persons so as to remove obstacles to access to protected cultural goods. The United Nations Convention on Protection of the Rights of Persons with Disabilities had been adopted, and the Delegation noted with concern that persons with disabilities still met with obstacles and could not participate equally with other people in society, and their rights were neglected. Work still had to be done on issues related to access for the disabled and development issues. The Delegation fully supported the proposal made at the last Committee session by the Delegations of Chile, Brazil, Nicaragua and Uruguay.

32. The Delegation of Japan stated that the informative session had provided a useful opportunity to share information on existing domestic provisions and their interpretation. Three facts were evident; first, that a considerable number of countries had provisions on limitations and exceptions; second that such provisions were of great variety in objective, scope and object in reflection of each country's circumstances; and third, the issues were very different in each country and while some simple provisions created ambiguities, other countries had operational problems due to lack of cooperation among stakeholders. In Japan, there were exceptions for both persons with disabilities and libraries and educational purposes with the aim of bringing better balance between rightsholders and users for the benefit of both, based on cooperation. A single international norm on limitations and exceptions might not have the desired effect. The approach should be flexible and mandated for each country to reflect its national system. It was premature to discuss norm-setting. An exchange of information would be appropriate, to understand national systems without precluding options for ways forward. The WBU Proposal required further study before comments could be made.

33. The Delegation of South Africa supported the statement made by the Delegation of Algeria on behalf of the African Group, and expressed sincere appreciation for the informative session on limitations and exceptions. Support was given for a balance between protection and granting access for the cause of development relating to both education and people with visual impairment and other disabilities. The Delegation also supported the

proposal by the Delegation of Chile for a questionnaire to share information among members that had not necessarily been covered by the studies. The Committee should take as its point of departure for work on limitations and exceptions the proposal made by the Delegation of Chile and others.

34. The Delegation of Colombia welcomed the proposal by the Delegation of Chile, and the proposed questionnaire on limitations and exceptions for visually impaired persons. Colombia had a draft law that was shortly to be submitted to its national parliament which included limitations and exceptions for the visually impaired, and there was good cooperation from publishers who paid attention to the needs of visually impaired persons. The Delegation repeated its previous statement, that it would be inappropriate to develop an international instrument setting norms on specific limitations and exceptions. Instead these should be general terms, allowing each country to develop its own limitations and exceptions under the three-step test set out in the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention).

35. The Delegation of the Islamic Republic of Iran supported the statement made by the Delegation of Pakistan on behalf of the Asian Group, and thanked the Chair for his summary of the Committee proceedings. The informative sessions had been useful, and an in-depth and structured discussion was needed on the issues raised. The Delegation also noted its admiration for the conscientious work of the WBU, and expressed readiness for a discussion on the WBU Proposal, which provided a good basis for discussion. It supported the proposal by the Delegation of Chile for a questionnaire that would collect the views of all members to support the Committee's work. It was noted that such a questionnaire had been conducted previously by the Trademark Sector of the Organization.

36. The Delegation of Nigeria supported the statement made by the Delegation of Algeria on behalf of the African Group and expressed appreciation to the WIPO Secretariat for preparing the studies and holding the informative session on limitations and exceptions. There was merit in the proposal made by the Delegation of Chile as a constructive way to move forward, and the questionnaire would be a useful first step to develop understanding. The value of the time-tested three-step test was acknowledged, but there was an absence of certainty as to what was permitted and, while there were some arguments that the current test allowed countries flexibility, the strict limits in the provisions of the test made that flexibility more illusory than real. It appreciated the studies, and believed that future studies would show the limitations of the three-step test in preserving the necessary flexibilities. Such studies could also show the impact of restrictions and inflexibilities on the educational needs and access to knowledge in developing countries. Specific provisions were required for the visually impaired and persons with disabilities. It hoped that the Committee would make more significant progress in its discussion and reach concrete outcomes.

37. The Delegation of Mexico supported the statement by the Delegation of Cuba on behalf of GRULAC, and noted the WBU Proposal. As promoters of the United Nations Convention on the Rights of Persons with Disabilities, great importance was attached to the issue. It supported the proposal made by the Delegation of Chile together with the Delegations of Brazil, Nicaragua and Uruguay on the work on exceptions and limitations for particular groups of beneficiaries in the public interest and for education in particular. Mexico had a Federal Intellectual Property law which made provision for exceptions and limitations, including, for example, for quotation, reproduction of parts of a work for scientific, literary or artistic criticism and research, the once-only reproduction of one copy for personal and private use without profit, reproduction of works by libraries of out-of-print books or books

for which copyright was exhausted for protection and preservation purposes, and reproduction for use in courts of law. National copyright law in Mexico also provided that “[i]t is not a breach of copyright if complete works or parts of works or phonograms or performances are reproduced, provided this is done not for profit, the sole purpose being to make it accessible to the blind or to the deaf or the mute”. Such provision also covered translations and adaptations into languages to communicate works to people.

38. The Delegation of Australia expressed appreciation for the papers presented in the informative session, which were informative and thought-provoking. Provisions on limitations and exceptions were an important part of the copyright system and were valuable at both national and international levels. The proposal made by the Delegation of Chile together with the Delegations of Brazil, Nicaragua and Uruguay provided a useful first step in identifying national models which could contribute to shared learning and analysis. Australia would constructively contribute to any survey or questionnaire as a good way to move forward. There was also willingness to discuss access to copyright works for the visually impaired, which was given impetus from the WBU Proposal and the paper presented by Mrs. Judith Sullivan. In that context, however, there was a need first to undertake domestic stakeholder discussions in Australia to inform the Delegation’s participation in the Committee as it assessed the way forward. With respect to the questions posed by the Chair, it noted that, while the studies were excellent, some could be usefully updated. In terms of concrete steps, the proposed questionnaire or survey would be a good way forward. Australia had participated in a similar exercise in the APEC context which had proved very valuable. With respect to the third question put forward by the Chair, on analysis and opinions, international attention could be beneficial for the interests of the blind or visually impaired and for the next Committee meeting some initial results of the questionnaire could be presented, identifying general similarities or differences that would help to identify next steps in addressing the needs of the blind and visually impaired.

39. The Delegation of the United States of America thanked the Secretariat for organizing the informal presentations on the three major studies commissioned by the Standing Committee on exceptions and limitations in advance of the session. All the presentations had been useful in helping the Committee to gain a deeper understanding of the diversity of copyright exceptions and limitations at the national level. The Delegation was prepared to share its national experience related to copyright exceptions and limitations with the Committee; in particular, to exchange information about the fair use doctrine and about specific statutory exceptions with a view towards developing a deeper understanding of the important role played by exceptions and limitations in its domestic copyright law in order to develop an understanding of the way exceptions and limitations helped to advance national, cultural, economic and information policy making. The Delegation was also prepared to explain its national exceptions and limitations for the benefit of the blind and visually impaired, taking into account the need to maintain a balanced work program within the Committee. Given the diversity and the complexity of national experiences, the discussions could be informative and rewarding but also time and resource intensive. As there were many other pressing issues that deserved the attention of the Committee, the discussion of copyright exceptions and limitations should take place within a balanced work program, including also the exclusive rights of copyright owners. With respect to the blind and disabled, the Delegation had benefited greatly from Judith Sullivan’s useful study, “Copyright exceptions and limitations for the visually impaired”, and her useful summary thereof. Among the many valuable insights and pragmatic conclusions in Ms. Sullivan’s study, the Delegation took special note of the need to facilitate collaboration between stakeholders with a view toward building accessibility into the ordinary publishing process. There could exist a need for

WIPO to provide additional guidance to developing countries about exceptions and limitations already in the international copyright framework and about the possible role of improved licensing including collective licensing in addressing the needs of blind and disabled persons. The Delegation expressed its interest in a rich, sustained and balanced discussion of the topic within the Committee. As earlier stated, the Delegation believed that it would be premature for the Committee to undertake any norm-setting activities in that area at the time, including undertaking specific analytical work with a view toward norm-setting. Consistent with the well established precedent and practice of the SCCR, the Committee should actively pursue a strategy of guided development to identify whether there were specific problems and if so to act on possible solutions for improving access to copyrighted works for the benefit of blind and disabled persons rather than to try to hastily establish new international norms. First, the committee should develop a deeper understanding of the underlying problems in national law and in the international framework, and then it would have many tools to determine whether and how to address such problems, including possibly organizing national and regional symposia on the issue and providing assistance and capacity building in the development of national legislation. The Delegation expressed interest in the suggestion of IFRRO that encouraged WIPO to convene a stakeholder forum to begin a deeper analysis of those issues. Considering that copyright was only one factor in improving access to information for blind and disabled and that WIPO had limited resources, philanthropic organizations and other donors could have an important role to play in advancing those objectives. To better understand and to begin to accommodate the interests of multiple stakeholders, national consultations were required. Domestic dialog was a fundamental element of that process, because it allowed Member States in the first instance to calibrate the appropriate balance between the concerns of rightsholders and of users. In the United States of America those discussions had scarcely begun, because only very recently had the Government received any communications from organizations representing blind and disabled persons and from a small number of blind or disabled persons themselves expressing support for this activity of the Standing Committee. It intended to meet with representatives of those groups as well as other stake holders to explore whether such activity would be warranted. That would allow it to be in a better position to evaluate whether there was a basis for discussion in the Standing Committee to explore the full range of options for improving access for the blind, visually impaired and other reading disabled persons including whether exceptions and limitations were needed to promote the making and dissemination of works in accessible formats. The Delegation supported the proposal of the Delegation of Chile with respect to a questionnaire which was exactly the kind of effort that was presently needed. If the case was made, the Delegation would consider proceeding under the proposed second work area of the Chilean proposal, provided that the proposal was clarified and modified to provide for an analysis of the full range of options for improving access for the blind and visually impaired, including whether there were exceptions and limitations that were needed to promote creation and dissemination of works in an accessible format.

40. The Delegation of Turkey appreciated the useful explanations given in the informative session and supported the idea of preparing a questionnaire on exceptions and limitations. In its view the questionnaire should include questions on legislation, implementation issues as well as court decisions. The informative session had been very helpful especially in the review of its national legislation. Therefore, it was open to further discussion on the topic. Regarding the WBU Proposal, the Delegation believed in the need for improving the access of the blind and the visually impaired to copyrighted works, and in its view the proposal was worth further exploration and discussion.

41. The Delegation of Switzerland noted that its national law contained a limitation which seemed to be in line with the demands of the WBU. That was possible under the existing rules, namely the three-step test. The demands of the WBU had certainly raised awareness for their cause and the Delegation hoped that also other countries would soon enact corresponding limitations tailored to their specific needs. However, since the existing international instruments gave enough room to accommodate the demands of the WBU, the Delegation was doubtful whether there was a need for any norm-setting at the time and encouraged the gathering of information on exceptions and limitations in general. It was not against a questionnaire and welcomed the information delivered by the Chair that further studies on exceptions and limitations were underway. Since there was a proven need for updating the existing protection for broadcasting organizations and audiovisual performances and since discussion on those issues had led to substantial progress the Delegation felt that the SCCR should prioritize those issues before entering into discussions on additional topics.

42. The Delegation of the Russian Federation thanked the Secretariat and the *rapporteurs* for organizing the briefing sessions which had been very interesting and had addressed in detail all aspects of exceptions and limitations in light of national legislation. It believed that an analysis of the national situation in the sphere of exceptions and limitations would be very useful and it was not against distributing a questionnaire, but was willing to share information based on the legislation of its country. The proposal from the WBU would be reviewed with the greatest care in its country. Within the national legislation of various countries extremely interesting points could be found and only consequently would it be appropriate to speak of an international convention.

43. The Delegation of Canada thanked the presenters for their studies, which had contributed to a better understanding of various approaches and issues related to implementation of certain exceptions and limitations in national legislation. It suggested having those studies updated, either through the Secretariat or by various delegations that could provide relevant information. Regarding the broad work plan suggested in relation to exceptions and limitations, it believed it would be useful to deepen the understanding of the situation at national level, and it supported the idea of a questionnaire, suggested by Chile. With respect to the visually impaired and without pre-judging any outcomes, it supported further analysis and study within the Committee as part of the program on limitations and exceptions, including explorations of how various mechanisms might be utilized to address the issue.

44. The Delegation of Norway supported structured and focused work on limitations and exceptions. It stressed the importance of having clear objective before entering into any detailed regulatory work.

45. A representative of the International Federation of Reprographic Rights Organization (IFRRO), speaking on behalf of 26 nongovernmental organizations, each representing international creators, performers or creative industries in its field, stated that copyright played a vital role for creative industries and that its potential for promoting development was determined by the way the legal rights functioned in practice. First, the existing flexibilities were not only adequate but preferable; therefore there was no need for new international binding norms restricting the freedom to develop locally adopted exceptions and limitations. Second, national legislative options should build on a flexible and firm foundation, based on the notion of lawful access for users and respecting the rights of creators and other rightsholders. Third, if the SCCR was to adopt the information sharing group method, the 26 signatory organizations could provide examples of good national models and practices,

drafted within the present international framework. Speaking then on behalf of IFRRO, the representative reminded that the previous day it had made a proposal concerning the challenges of blind and visually impaired people. In accordance with Judith Sullivan's first option for solutions, IFRRO encouraged WIPO to launch a platform for stakeholder consultation in a speedy manner to develop a roadmap for ensuring access to copyright works for the blind and visually impaired. That roadmap could include a joint effort to devise a set of best practice resource, guidelines, and/or sample agreements in order to facilitate the availability of accessible reading materials in a trusted and secure environment. Here, WIPO would be an appropriate neutral and transparent forum.

46. A representative of the International Center for the Study of Industrial Property (CEIPI) encouraged further and deeper study of exceptions and limitations to copyright, including from a norm-setting perspective. In connection with the statements of many delegations that had mentioned the three-step test, and in particular the Delegation of Nigeria, attention was drawn to the declaration, titled "The three-step test in copyright law", prepared by the Max-Planck Intellectual Property and Taxation Law Institute in Munich and the Queen Mary University in London. The purpose of the declaration was to insist on the necessary balance between copyright and the general interest. The representative quoted from the declaration: "One, the three-step test constitute an indivisible whole. The three steps are to be considered together as a whole in a comprehensive over-all assessment. Two, the three-step test does not require limitations and exception to be interpreted narrowly. They have to be interpreted according to their objective and purposes."

47. A representative of the Library Copyright Alliance (LCA) noted that library copyright exceptions were critical to support learning and research, to provide equitable access to information to the public and to preserve cultural heritage. LCA recognized the need for creators to be rewarded for their work and for their creative work to be protected from unfair exploitation. The value of contents acquired by the global library market was 22.5 billion dollars. Copyright protection was required by international treaties, but most limitations and exceptions were optional. Copyright exceptions were a need in the digital world where information was a primary currency; but different rules applied to different formats when all formats should be equal in terms of exceptions. Because there was no exception for long-term preservation, digitization projects, particularly through multi-national cooperation were hampered. The LCA supported the proposal by Brazil, Chile, Nicaragua and Uruguay for work related to exceptions and limitations. It believed that there was a need for the Committee to adopt a work-plan that would identify national models and best practices, and it hoped that consensus would be achieved on a recommended set of minimum exceptions and limitation for libraries.

48. A representative of the International Federation of the Phonographic Industry (IFPI) speaking as one of the signatories to the joint rightholders' position paper, added some points to the legal issues involved. Exceptions and limitations were a fundamental part of the copyright system, as they served to actually define the scope of rights. Striking a balance between the rights of copyright holders and interested users was critical to national law as well as to international treaty provision and had been at the heart of WIPO's work for decades. For that reason exceptions and limitations could not appropriately be addressed in isolation. The three-step test was a long established high level principle in all major copyright treaties. It provided a safety net for all exceptions and limitations allowing flexibilities from Member States within the boundaries of the accepted criteria. Its negative side was that it was not static. The essential goal remained to ensure that beneficial uses in the public interest were permitted and supported. There were a number of techniques available to achieve that goal,

including, first, the very definition of the right; second, exceptions and limitations; third, licensing models; and fourth, a variety of cooperative sector specific programs and guidelines.

49. A representative of the International Federation of Associations of Film Distributors (FIAD) supported the position paper on exceptions and limitations, presented by IFRRO and IFPI. The search in each country for technical solutions seemed to be the most appropriate solution, in line with the WBU Proposal. An example was FIAD's mechanisms for audio description, which made access to cinematographic works possible. The new technology was no longer limited to special cinemas, but could also be used at home. This example had shown that, rather than producing an enormity of texts, the search for practical solutions should be a priority.

50. A representative of Consumers International (CI), speaking also on behalf of the Trans-Atlantic Consumers Dialogue (TACD) welcomed the proposal of the Standing Committee to prioritize the work of WIPO, in order to make progress towards achieving consensus at a minimum international standard. They supported the proposal made by the Delegations of Chile, Brazil, Uruguay and Nicaragua. Limitations and exception were important for libraries, education, archives, innovative services and visually impaired and other disabled persons. In each of the various sectors for studying limitations and exception, some should have focused on information gathering, some on analysis and some on norm setting. In terms of information gathering, WIPO should undertake studies on the role of limitations and exception for distance education and innovative services to complement already completed studies. In terms of norm setting the representative supported the WBU Proposal. Since 2003, the WBU had petitioned WIPO and the SCCR for action to address their need for global harmonization of limitations and exceptions for the blind and to ensure that accessible formats and copyrighted works that were created under such limitations and exception could be exported and imported in order to facilitate the global distribution of accessible works over the Internet. At the heart of the WBU request was a need to address the benefits of economies of scale in making works available. They also noted the importance of serving the needs of persons who had migrated to other countries and the needs of visually impaired persons to have access to works published in several languages. There might be an important role for WIPO in terms of norm setting.

51. A representative of the International Federation of Journalists (IFJ) supported the promotion of strong copyright protection for journalists: the right to be named, to protect integrity of their works and to receive equitable remuneration when journalistic content was used. According to the WIPO international treaties, journalists enjoyed a series of exclusive rights over the contents they created, while on the other hand limitations and exceptions to copyright were implemented at national level, subject to the three-step test. The situation as it was complied well with the necessity to strike a balance between the interest of rightsholders and those of contents users. At a time of crisis, where many journalists and other creators struggled to make a living, where the same material was being used in different formats and copied without any additional fees, asking for strong enforcement of intellectual property rights was not a lame request. Voluntary agreements were the better solution to allow for limitations and exceptions and ensure remuneration for the creators. Statutory exceptions had the disadvantage of remaining static. Voluntary agreements could be more easily updated if social or technological developments made changes necessary. In Denmark, for instance, an agreement between rightsholders and the Danish Broadcasting Corporation allowed for the broadcasts to be made available to the public on the Internet. That was possible because there was a general clause in the Danish Copyright Act, extending voluntary agreement to cover

non-represented rightsholders. The recent settlement between Google and book publishers for the on-line making available of books was another example of how voluntary agreements were possible and could secure the public's access to media and information, but the people who created such information should receive an equitable remuneration.

52. A representative of the Ibero-Latin-American Federation of Performers (FILAIIE) supported the proposal of drafting a questionnaire to enable comparative studies on the important issue of exceptions and limitations. The problem was how to draft an international treaty acceptable to all parties. Drafting one based on the doctrines mentioned was very complicated, because the three-step test referred to "certain specific cases". The representative offered several examples of cases for which an application of the three-step test might not provide a satisfactory outcome and required greater clarity regarding what cases were being discussed. The best procedure would be drafting a questionnaire to continue to move forward.

53. A representative of the International Federation of Film Producers Association (FIAPF), which was also a co-signatory of a joint position of the Creative Rightsholders Organization presented by IFFRO, believed that treating exceptions and limitations as a stand alone proposition might not be the preferable methodology, because of the risk of divorcing those important issues from the substantive rights to which they were related. During the informative session the experts had stressed their concern for striking a workable balance between the public interest and the rightsholders. Striking such a balance required an integrated approach relating to specific sets of exclusive rights, rather than parts of specific components of the copyright and related rights architecture. FIAPF recommended therefore that consideration of exceptions and limitations as a separate horizontal debate should be focused exclusively on information exchange and the identification of best practice for the benefit of Member States in a multilateral context. It welcomed the suggestion of Chile to prepare studies and questionnaires within the SCCR. Film was perhaps the single most popular form of cultural expression on the planet. The preservation and the circulation of that rich and diverse form of heritage going back over 100 years was a primary concern of film makers and producers as well as film libraries. The producers valued the lawful use of their works for research education and cultural purposes within clearly defined and negotiated parameters. FIAPF invited Member States to take into consideration the existing non-normative voluntary agreements, concluded to maintain the equilibrium among the stakeholders involved.

54. A representative of the Electronic Frontier Foundation (EFF) endorsed the joint statement of several civil society groups on exceptions and limitations. In accordance with the recently adopted development agenda and its vision for WIPO's leadership in a global, large economy, EFF urged the SCCR to discuss the WBU Proposal as the first part of establishing a step by step plan on copyright exceptions and limitations, as proposed by the Delegations of Chile, Brazil, Uruguay and Nicaragua at the sixteenth session of the SCCR. Now was the time for the SCCR to show leadership on mandatory minimum copyright exceptions and limitations, because there was a wide disparity in the exceptions and limitations in national laws. Copyright had expanded dramatically in scope, duration and breadth and a legal fortification of technological protection measures had increased the asymmetry between exclusive rights and public access to knowledge and innovation. Copyright laws were territorial, but the digital environment was global, and education across borders and internationally accessible digital libraries were frustrated by the diversion of exceptions and limitations in different countries and the unclear application of private international law. The need of educators, libraries and other knowledge providers should be

taken into account in the discussion of how copyright law should be updated. The EFF commended WIPO for commissioning a study of exceptions and limitations for educational purposes in member states as national laws. They suggested WIPO to commission an empirical survey from the point of view of educators. That survey would allow Member States to understand the particular needs of educators and students. Those were compelling humanitarian problems and they could no longer be ignored without calling into question the legitimacy of the entire copyright regime. Providing greater certainty to students, educators, information service providers and technology developers required minimum exceptions and limitations. They exhorted the SCCR to focus its work on meaningful exceptions and limitations that were the key to the development agenda and future relevance of WIPO.

55. A representative of the International Federation of Library Associations and Institutions (IFLA), speaking also on behalf of the Coordinating Council of Audiovisual Archives Associations (CCAAA) congratulated the secretariat for commissioning the four excellent and very useful studies on exceptions and limitations which had been presented in the previous days. They also welcomed the forthcoming study on exceptions for education and distance learning. Among the numerous findings of those reports was that twenty-one countries had not implemented any exceptions for libraries and archives and many others still had not adapted their exceptions for libraries and archives for the digital age. Additionally, fewer than half of WIPO's Member States had exceptions for the benefit of visually impaired people. IFLA therefore supported the WBU Proposal. A strong library and archive infrastructure was a major factor in the delivery of education, research knowledge and culture, and it was essential to the economic development of any nation. Library and archive copyright exceptions, especially in the digital age, were central to the delivery of the library mission. As it had been stated by WIPO Director General, Mr. Francis Gurry: "It would be unfortunate if we were to move from a centuries-old system of publicly created and overseen rights to systems of private law simply by default, as opposed to conscious choice". In particular, libraries and consequently library users were already experiencing the impact of information being subject increasingly to private contracts and licensing, often enforced by technological protection measures which in many countries were allowed to override the statutory copyright exceptions. The studies revealed the needs for a minimum level of exceptions and limitations, to foster education and research and consequent economic growth in Member States and to deliver on the WIPO development agenda. IFLA supported the proposal by Brazil, Chile, Nicaragua and Uruguay.

56. A representative of the International Music Managers' Forum (IMMF) remarked that the landscape of copyright and related rights had changed radically in the past ten years, especially due to the development of the Internet. Because of the wide global access, any work that the SCCR could undertake in order to harmonize the laws of copyright and related rights had to be very helpful. Users could not have certainty on the limitations or exceptions applicable in foreign countries. Therefore, certain basic minimum levels of limitations and exceptions such as what was proposed by the WBU, were recommended. The suggestion by the Delegation of Chile of a questionnaire to produce information seemed to be an excellent first step. The three-step test had proved to be a very sound and useful basis for copyright law concerning limitations and exceptions and IMMF would very much like to see its application more widely used. For example, the lack of accurate adherence to the three-step test in the UK copyright law was causing UK music industry considerable difficulties.

57. A representative of Knowledge Ecology International (KEI) supported the proposal by Brazil, Chile, Nicaragua and Uruguay to set out a work program on limitations and exceptions, and also the proposal of a survey on the same topic. KEI agreed with EFF, CI and

the library NGOs that had emphasized the need to have a high priority work program that related to people who were blind, visually impaired or who had other disabilities. According to the World Health Organization there were thirty-seven million people who were legally blind; another hundred and twenty million people or more whose vision did not allow them to read; and millions more that had other disabilities. Of great concern was the problem of exporting material to foreign countries. The WBU Proposal to have a global platform, so when someone afforded the high expenses of making a work accessible for visually impaired people it could be distributed worldwide. The next session of the SCCR should consider the proposal for a WIPO treaty for blind, visually impaired and other disabled people.

58. A representative of Public Knowledge pointed out that, during the informative session, all the presenters had agreed that the Committee should address and make progress on the item of exceptions and limitations. He supported the proposal by Brazil, Chile, Nicaragua and Uruguay. The issues raised by new technologies, including the increased ability to move works between formats and the ability to impose practical protection measures on works had been addressed in the evolution of copyright law. However, the focus had been primarily upon rightsholders' needs in the digital world, often neglecting the effect that the new technologies might have on users. Efforts to harmonize copyright law internationally had added to the trend of increasing liability exposure to individuals. While liability in enforcement had been assured international minima, exceptions and limitations were left to a patchwork of inconsistent national regimes. That demonstrated the need for clarity and international standards for exceptions and limitations. Judith Sullivan had remarked that the national differences in limitations and exceptions for the visually impaired could lead to legal uncertainty and barriers to access. The WBU Proposal provided an excellent starting point for ensuring that the laws on technologies that benefited the rightsholders did not unduly constrain the visually impaired. That work should be taken up by the committee imminently. Although establishing copyright exceptions for the visually impaired might not be sufficient to solve the problem of access to works and knowledge, those exceptions were certainly necessary. The Delegation of Pakistan on behalf of the Asian group, had mentioned the urgent need for concrete steps in that area and Public Knowledge believed that the WBU Proposal represented such a concrete step. The informative sessions had indicated the potential for other useful instruments to clarify and harmonize limitations and exceptions in other areas, such as libraries and archives. Other areas, such as orphan works and educational uses merited further exploration.

59. A representative of the International Association of Scientific, Technical and Medical Publishers (STM) reminded that it was often stated that because education and research were in the public interest, they constituted a certain special case for which copyright exceptions were permitted. Actually, the public interest in research and education was best served by encouraging the creation of new publications and information services. STM therefore shared the views expressed by other NGOs and delegations, that with reference to norm setting activities it was not advisable to divorce exceptions and limitations from exclusive rights. Exceptions and limitations were not the only way of solving problems. STM supported the proposal by IFFRO, to bring together experts for a stakeholders' platform as well to work together to address the various issues faced by the visually impaired communities.

60. A representative of the World Blind Union thanked WIPO for organizing the informative session because it had helped the SCCR member States to better understand the whole role and relevance of exceptions and limitations, and the delegates who suggested that the blind people should also be talking with the publishers. WBU supported the very powerful and unequivocal commitment on the publishers' website to finding a solution for

access for the visually impaired readers. With reference to the European Union position that the current exceptions facilities at the national level were quite adequate, he remarked that visually impaired persons still had access to only 5 per cent of all published works and that could not be considered an acceptable deficiency. The WBU thanked all the delegates who had said that the WBU proposed treaty suggestions was of interest to them and that they would take them to their countries for further consultations. The WBU's national members would very much like to participate in such consultations to share information about their needs. There was an important need for import and export of works in accessible formats as most of the visually impaired persons were living in the tropical belt. The voluntary sector, the blindness organizations in those countries, were economically weak and they could not just publish everything themselves, whereas the richer blind organizations in some parts of the world could lend and share the works in accessible format that they had produced, but such a global lending library would not be possible within the current copyright situation based on national jurisdiction. Norm setting was just one of the tools to address those needs. The Committee should keep the topic on the agenda for its next meeting to enable delegates to carry out domestic consultation and then have a serious discussion on how they could actively and creatively solve the problems.

61. The Delegation of Chile hoped that the Secretariat would distribute soon the questionnaire, which would allow collecting the necessary information to continue the analysis of exceptions and limitations. Considering the broad consensus on the excellent presentations made during the informative sessions and the ensuing discussions it would be a good idea to document the discussion by incorporating it into the report of the SCCR. Also, as pointed out by the Delegation of Canada, it appeared important to update the studies with information provided by Member States. The study on exceptions and limitations in the area of education should be finalized as soon as possible. It should be subject to an informative session similar to that which successfully had taken place during the present SCCR. The proposed questionnaire responded to the need to update information on exceptions and limitations. Moreover, organizing regional seminars on exceptions and limitations would also be an important step to disseminate the knowledge on that issue among rightsholders, users and others.

62. The Delegation of the European Community, speaking also on behalf of its member States, had taken note of the paper that was distributed by the World Blind Union containing treaty language for a possible future WIPO treaty for the visually impaired and other reading disabled persons. However, the Delegation had not yet had the time to carefully study the document and consequently was not in a position to comment on it. The European Community and its member States were very sympathetic to the cause of the disabled people and indeed the Community legal framework already provided for a limitation for uses for the benefit of people with disabilities. To be covered under that limitation the uses had to be directly linked to the disability, be of a non-commercial nature and their extent had to be required by the specific disability. The European Copyright Directive stressed that member States of the European Community should adopt all necessary measures to facilitate access to works by persons suffering from a disability which constituted an obstacle to the use of the work and that member States should pay particular attention to accessible formats. All 27 member States had implemented the limitation in their national laws. The limitation for the benefit of disabled people was also addressed in the European Community Green Paper on Copyright in the Knowledge Economy which had been published during the summer of 2008, a consultation document addressed to the public at large. It attempted to structure the copyright debate as it related, *inter alia*, to publishing in the digital environment, digital preservation of Europe's cultural heritage of works and the situation of disabled people. The

green paper also referred to examples of the cooperation of rightsholders and organizations representing visually impaired. The European Community and its member States were of the opinion that the issue of exceptions for the benefit of disabled people should be addressed in the overall framework of exceptions and limitations to copyright and neighboring rights. A possible way forward could be to look into IFRRO's idea to create a platform, which could be hosted by WIPO, where all the issues could be discussed among stakeholders. In the EU there was relevant experience in regard to high level expert groups, which had resulted in tangible successes. As regarded the proposal for a questionnaire, made by Chile, the Delegation was open to the idea, although some clarification was needed on the purpose of such a questionnaire. The questionnaire should be drafted by the WIPO Secretariat and not by any particular stakeholder. It should be done on an *ad hoc* basis and in a focused manner. The document tabled by Chile raised a few concerns. While it was called Survey on Copyright Limitations and Exceptions it also addressed other issues like Internet service providers' liability, DRM and issues like peer to peer file sharing. It would not be appropriate to address those issues in a questionnaire on exceptions and limitations. The Delegation requested the Secretariat to circulate the questionnaire among the Member States of WIPO so that they could have a chance to provide input before it was finalized.

63. The Delegation of Romania, speaking on behalf of the regional group of Central European and Baltic States, expressed its appreciation for the various studies concerning exceptions and limitations. Those documents deserved proper consideration and assessment by Member States so they should remain on the agenda of the SCCR for future examination and be updated. The Delegation supported the views of the Delegation of the European Community in regard to the document submitted by Brazil, Chile, Nicaragua and Uruguay. A progressive approach towards exceptions and limitations as outlined in the first phase of such document might lead to a somewhat different conclusion from those supported in that paper. Any form of exchange of views and sharing of experiences in that field would allow obtaining a more comprehensive picture of the available approaches. In that light a questionnaire on exceptions and limitations, covering both matters of legislation and implementation, was very appropriate. The Secretariat should take up the task of drafting the questionnaire and sharing it with Member States with the view to offering them the opportunity to provide comments on its contents.

64. The Delegation of Ecuador supported the proposal submitted by Brazil, Chile, Uruguay and Nicaragua as well as the questionnaire as described by the Delegation of Chile. The proposal by the World Blind Union was very valuable as it highlighted the relationship between the United Nations Convention on the Rights of People with Disabilities and the work being done at WIPO.

PROTECTION OF AUDIOVISUAL PERFORMANCES

65. The Chair opened the floor for discussion on the protection of audiovisual performances. The Standing Committee had had the opportunity to participate in the information session where the outcome of the national and regional seminars on the protection of audiovisual performances had been presented on the basis of a summary prepared by the Secretariat. In its conclusions the sixteenth session of the Standing Committee expressed its willingness to take up further discussions on the substance with the aim of finding a way forward towards the international protection of audiovisual performances. In the context of the 1996 Diplomatic Conference, the international protection for audiovisual performances had been included in the Basic Proposal as an alternative. There had been no possibility to

include the protection of audiovisual performances in the 1996 treaties, but a resolution by the Diplomatic Conference had stated that the question would be dealt with. At a subsequent Diplomatic Conference, which took place in December 2000, 19 articles on the substance of the protection were provisionally adopted, but one element, namely the issue of transfer of rights, blocked the adoption of the new treaty. Since then the question of audiovisual performances had been pending and it had been revisited by the WIPO General Assembly every year. At the March session of the SCCR the issue had been included in the Agenda for updating the information on the prevailing positions and situations. That was also the purpose of the present session.

66. The Delegation of the United States of America thanked the Secretariat for organizing the informative meeting on the protection of audiovisual performances in advance of the Standing Committee session. Exchanging current and accurate information relevant to the protection of audiovisual performances was extremely useful to the members of the Committee. On the basis of those presentations and the useful record prepared by the Secretariat, the Delegation was not aware of any change in the position of Member States regarding the different views on the means of achieving the protection of audiovisual performances at the international level, particularly regarding how to bridge the different approaches to the transfer of exclusive rights from performers to producers. The Delegation remained fully aware of the needs to protect audiovisual performers and copyright creators and owners in the digital world. Therefore it continued to support work within the Standing Committee towards the international protection of audiovisual performers as well as WIPO's efforts to organize national and regional seminars on the issue in 2009. It welcomed the opportunity to further discuss the results of such meetings within the Standing Committee.

67. The Delegation of France, speaking on behalf of the European Community and its member States, welcomed the fact that the protection of audiovisual performances continued to be on the agenda of the Standing Committee. The protection of audiovisual performances was extremely important for all delegations. The Secretariat of WIPO deserved recognition for organizing the information meeting which had just taken place, for having drafted, following a request made at the previous meeting of the SCCR, a summary of the outcome of the national and regional seminars and also for its constant efforts to organize the seminars. Those developments would facilitate progress in the discussions to better identify the outstanding issues, and to reach rapidly a consensus. The European Community and its member States remained in favor of strong protection for audiovisual performances in line with the protection afforded by WPPT to other performances.

68. The Delegation of Japan thanked the Secretariat and the Member States of WIPO for their efforts in promoting developments on that very important issue and also appreciated the General Assembly for taking the issue on the agenda of the SCCR. The proposed treaty was very important for providing necessary protection to audiovisual performers in the era of the networked society. In that sense, the regional seminars that had been organized had been very beneficial to improve the knowledge and understanding of the situation of performers in the respective countries. Japan supported WIPO in continuing to hold regional seminars and hoped that Member States and the Secretariat continued to work to overcome the current difficulties thereby leading to the early adoption of the treaty for protection of the audiovisual performers.

69. The Delegation of Mexico reiterated the importance of the protection of audiovisual performances and the urgent need for performers to receive appropriate remuneration, particularly given the huge technological advances in recent years. The discussion by the

Committee could be focused on all the aspects that could not be approved at the Diplomatic Conference in 2000 and notably on the topic of the transfer of rights, which would allow moving forward towards the convening of a diplomatic conference. The idea was to use the progress made at the Diplomatic Conference and to use it as a basis to continue negotiating only the aspects that were still pending.

70. The Delegation of Algeria, speaking on behalf of the African Group, reaffirmed its interest in the protection of audiovisual performances and thanked the Secretariat for having established document SCCR/17/3 which collected information on national and regional seminars and summarized the various positions of Member States on that issue. The African Group was pleased to hear of the organization of a WIPO-Africa Regional Seminar on the protection of performers, which was planned to take place in Malawi. Those Seminars were extremely important for the development of protection mechanisms on the national level in order to reduce divergences and seek consensus at the international level. The African Group would like to see the rapid conclusion of a treaty on the protection of audiovisual performances and called on delegations to overcome stumbling blocks and to hold informal consultations to that end.

71. The Delegation of India was supportive of the enhanced focus on the protection of audiovisual performances in the SCCR and its continuation on the agenda. Following the failure of the Diplomatic Conference in 2000, discussions and international consensus building on issues pertaining to the audiovisual sector drifted to other fora. It was perhaps opportune to take stock within the SCCR and in WIPO of all the issues involved. Continued organization by WIPO of information meetings, regional and national seminars was encouraged, with the focused objective of narrowing differences specifically on the issue of transfer of rights.

72. The Delegation of Guatemala indicated that document SCCR/17/3 was an informative and useful contribution regarding the national and regional seminars held in relation to the protection of audiovisual performances. The national seminar on the collective management of intellectual property rights of performers in Guatemala, which took place in July 2007, was organized by WIPO in cooperation with the Ibero-American Federation of Performers (FILAIE) and in coordination with the local copyright authorities. The seminar facilitated a good dialogue between interested parties and the national authorities with several positive results, including a diagnostic evaluation of the situation of performers at the national level and the establishment of a mechanism for coordination allowing better inclusion of the interests of performers when designing public policy. With a very practical focus options and tools had been examined for the protection of rights of artists and the development of adequate social infrastructures, including collective management organizations, which were considered a good way of protecting performers in Guatemala. National and regional seminars had contributed to increase awareness of the need for an international treaty.

73. The Delegation of Italy supported the statement made by France on behalf of the European Communities and its member States with a view to seeking a rapid consensus on a treaty on audiovisual performances. After holding so many seminars it appeared appropriate to hold a substantive discussion, which would take into account whether the issues on which there was agreement at the 2000 Diplomatic Conference still continued to be agreed upon or whether progress had been made in terms of the position of the various States.

74. The Delegation of Indonesia thanked the Secretariat for the informative session as well as for the summary of the outcome of the national and regional seminars on the protection of

audiovisual performances and stocktaking of positions. It noted that the view had often been expressed at the SCCR that in the absence of new international regulations, governments and stakeholders could still significantly contribute to improving the conditions of audiovisual performers at the national and regional levels. Without performances, works such as films and music compositions would not reach the public. Performers did not take part in the creation of the work or a part of it but in its interpretation or performance. Accordingly, they should only qualify for related rights status, arguably with lesser protection than authors, the true creators.

PROTECTION OF BROADCASTING ORGANIZATIONS

75. The Chair recalled that the updating of the international system of the protection of broadcasting organizations had been under active consideration for about ten years, at every session of the SCCR, including the current session, in addition to two special sessions. The matter had been prepared in a most profound and orderly manner on the basis of first preliminary discussions at conferences in the beginning of the process, and then collecting proposals from the Member States, groups of Members States and the European Community. There were some 15 proposals made in treaty language. Those proposals had been compiled in consolidated documents and later combined into different versions of draft basic proposals. The most contentious matter, protection of the webcast or netcast signal had been removed from the main package and set on its own track to be dealt with later, and the work continued on the traditional broadcasters' and cablecasters' protection. The substantive preparation culminated in September 2006 when a Revised Draft Basic Proposal for a treaty was submitted, following the principle of inclusiveness; all proposals made at that moment were included or at least referred to in the document. The question of convening a diplomatic conference had been considered at the level of the General Assembly at least three times. Also, at the SCCR the number of proposals showed that there were still too many alternatives to bring to a final negotiation in the framework of a diplomatic conference. That feeling had been shared at the General Assembly. The 2007 General Assembly, deciding about the special sessions of the SCRR, had stated that those sessions should aim to agree and finalize on a signal-based approach, the objectives, specific scope and object of protection of a treaty, with a view to submitting to a diplomatic conference a revised basic proposal. Before that moment, there had been at least two or three different methodologies used to try to reduce the number of alternatives. On the 10 main elements there were alternative proposals in the package, and after going through those elements one by one and asking the proponents of different alternatives whether one or the other alternative could be withdrawn or merged into one or the other proposal it had become evident that no alternatives could be removed. During the special sessions a third method was tried. The first had been discussion, the second a systematic examination one by one of all proposals and the third was trying to establish as clean as possible informal papers in order to see how a treaty might look. Those informal papers of course were not binding for anybody. Such papers were prepared for the first of the special sessions, the same method was then continued and tested in between the two sessions and the trial continued at the second session. In the end, it became evident that the only thing that could be said officially to be on the table was the compilation of all proposals in document SCCR/15/2 Rev. After that the General Assembly took note of the progress and the good faith efforts to try to provide basis for the convening of a diplomatic conference and reiterated the conditions on which a diplomatic conference could be convened. It decided also that the subject matter of broadcasting organizations and cablecasting organizations be retained on the agenda of the SCCR for its regular sessions, and now was the second of those regular sessions. There had been a discussion at the sixteenth session of the

Committee and in short, the outcome had been the following conclusions that the Committee had agreed on: “The delegations who took the floor expressed their support in continuing the work on this item in consonance with the mandate of the General Assembly, and many delegations showed their interest towards the conclusion of a treaty.” And then, there was a request and decision: “The Chair will prepare an informal paper, based on the mandate of the General Assembly, rendering his understanding of the main positions and divergences, to be dealt with in the next session of the SCCR.” That mandate from the Committee to the Chair had been fulfilled through the informal discussion paper SCCR/17/INF/1, containing an assessment of the positions and divergences. It linked its considerations to the conditions set by the General Assembly, as restated on pages 9 and 10. At the end of the document, some possible ways to move forward were indicated. Alternative A referred to a continuation of the process on the basis on the work done so far, including document SCCR/15/2 Rev., once all positions and divergences were examined and well understood. Alternative B was a new avenue akin to the Geneva Phonograms Convention or Brussels Satellite Convention models. The protection of those Conventions had been designed in such a way that they laid down the acts and situations where the protection should be operative and let the Contracting Parties decide the concrete legal means through which protection would be granted, whether copyright or related rights, telecommunications or administrative legislation, competition or misappropriation rules. There might also be other positions and methods to continue the work.

76. The Delegation of Pakistan reiterated the Asian Group’s position that a signal-based approach should be the basis for any future norm-setting initiatives regarding traditional broadcasting and cablecasting organizations. Instead of making choices among options, as proposed in the Chair’s paper, the Group believed that there was a need for further studies on a number of issues at stake. Further analysis of the issues would promote better understanding among Member States. The Agenda item regarding broadcasting organizations could be maintained on the agenda for future sessions of the SCCR.

77. The Delegation of France, on behalf of the European Community and its member States, supported having the protection of broadcasting organizations on the agenda of the Standing Committee. Discussions were needed to overcome divergences and reinforce the protection at the international level through a new legally binding instrument, allowing broadcasting organizations to face new forms of signal piracy. The Chair’s paper adequately analyzed the main positions and divergences on the issue.

78. The Delegation of the Philippines fully supported the first option that was mentioned in the informal paper prepared by the Chairman and confirmed its commitment to negotiate and conclude the new treaty. It recommended that an informative session on the broadcasting treaty be organized in the next session of the Committee, so delegations could better understand and clarify issues pertaining to the pending treaty.

79. The Delegation of China supported that the rights of broadcasting organizations were an important question for discussion at the SCCR. Since 1998, the Standing Committee had made a great deal of efforts in updating the protection of broadcasting organizations, and efforts should continue to conclude a treaty within the WIPO framework. As technology advanced and rights of authors, audiovisual performers and producers were being fully protected, updating the rights of broadcasting organizations became imperative. Any discussion should be limited to the protection of traditional broadcasting and cablecasting organizations. The Delegation opposed extending the discussion to webcasters’ protection and stressed the need to pay full attention when negotiating the treaty to the balance between

rights and the public interest. Alternatives A and B or any new proposal could be considered, as long as it led to a final conclusion of the treaty. The Delegation was open and flexible in that respect.

80. The Delegation of Brazil supported retaining the issue of broadcasting organizations on the Committee's Agenda. However, the Chair's paper clearly indicated the wide divergences of views and the persistence of far-apart positions on the issue. It would be premature to make any deliberations on possible ways forwards towards the negotiation of a broadcasting treaty. The 2007 General Assembly had made clear the conditions for resuming negotiations. Those conditions required that the subject of a treaty on the rights of broadcasting organizations could be considered only after an agreement had been achieved on the objectives, specific scope and object of protection. That was in fact a conditionality that would be very difficult to overcome. Rushing back into negotiations might turn out to be a waste of valuable resources and time.

81. The Delegation of Mexico said it was very important to make progress in the negotiation of an international instrument to overcome piracy of signals, particularly in the light of the challenges raised by technological advances. That negotiation must consider the decision of the General Assembly concerning the necessity of obtaining agreement on the objectives, the specific scope and the object of protection of the treaty before moving to a diplomatic conference.

82. The Delegation of Algeria, on behalf of the African Group, favored the development of a relevant treaty and believed that protection must explicitly cover the signal. The African Group encouraged Member States to settle pending issues. Achieving a consensus on the objective, object and specific scope of protection was a prerequisite to holding a diplomatic conference on that matter. The African Group requested that the Secretariat carry out studies on the international status of the protection of those organizations based on the signal and to organize an information session during the next Committee meeting. With regard to the options presented by the Chairman, the African Group favored maintaining the issue on the agenda of the SCCR and pursuing negotiations on the basis of a pending treaty given that a substantive work has already been carried out over many years. It reaffirmed that protection must not extend to webcasting given the digital divide that many developing countries suffered from and because of the need to better control the relevant aspects of the technological developments before implementing any international standard in the area.

83. The Delegation of Japan stated that providing protection to broadcasting organizations was very important in the era of the digital and networked society. Although there was a considerable divergence of positions among Member States, the Committee should not end the discussion, and the issue needed to be retained on the agenda of the SCCR so that delegations would strive to achieve an agreement. It was necessary to provide exclusive rights for broadcasting organizations to ensure protection against international piracy. Therefore it favored option A of the Chair's paper.

84. The Delegation of India noted that all positions had been accurately stated and due concern had been shown regarding the development agenda. The stated objective of establishing a balanced new instrument that achieved necessary protection in the complex and evolving communications' environment was laudable. The Delegation had been of the consistent view that the time was not right to stray into the area of the Internet, precisely because the communications' environment was still evolving and needed to be better understood before regulation came under consideration. The issue of extending protection to

webcasting signals had been provisionally set aside for later separate discussions. A similar view needed to be taken with respect to retransmission. The proposed treaty should be focused on empowering broadcasting organizations with rights to prevent piracy of content-carrying signals. While the broadcasting treaty had been under debate for the past more than 10 years, the menace of signal piracy continued unabated. The discussion should not lose focus on rights to information and access to knowledge which should not be impeded in any way with the enhancement of rights of the broadcasting organizations. The Delegation did not support any rights overlying the rights of the content providers in the form of exclusive rights and stressed that the protection of broadcasters should be limited to the signals prior to and during transmission. There was no reason to go beyond Article 14.3 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) regarding the rights of the broadcasting organizations. Based on the decision of the 16th session of the SCCR, the Chair had prepared an informal paper on the Agenda item, but no meaningful conclusion could be reached if the Committee continued working based on just two options without undertaking development-based research in the area. More studies were needed to find out the implications which the extension of protection to computer-based transmissions could entail for the developing and least-developed countries, particularly regarding access to information and the development of domestic broadcasting industries. The experience of countries and regions like the European Union needed to be evaluated as well.

85. The Delegation of Egypt stressed the need to keep the topic of broadcasting organizations on the agenda of the Committee and to seek more clarification with regard to alternative B in the Chair's paper. The Committee had to abide by the decision of the General Assemblies of WIPO so that discussions should be focused on the protection of the signal against piracy, excluding webcasting.

86. The Delegation of El Salvador stressed the importance of the mandate given by the General Assembly in 2007 on the protection of broadcasting organizations and favored the convening of a diplomatic conference. It trusted that the Committee would reach consensus mainly on the objective, specific scope and the object of protection of the instrument.

87. The Delegation of South Africa supported the statement made by the Delegation of Algeria on behalf of the African Group. It remained open to continue discussions on the protection of broadcasting organizations in accordance with the mandate of the General Assembly to reach consensus on the objective, scope and object of protection limited to a signal-based approach, excluding webcasting. Further studies should be conducted by the Secretariat on the matter and presented at an informal session of the SCCR in the next session. The developments of the broadcasting industry throughout the world should be addressed in those studies.

88. The Delegation of Nigeria supported the statement of the Delegation of Algeria on behalf of the African Group to keep the issue on the agenda of the Committee. There was no point in protecting webcasting as it was premature to determine the kind of protection that would be necessary and the limitations that might be required. It favored Option A in the Chair's paper, subject to further clarification on what the openness, inclusiveness and flexibility mentioned in bullet 3 would entail.

89. The Delegation of the Republic of Korea noted that the majority of Member States had acknowledged that traditional broadcasting organizations needed to be accorded proper protection in the new environment. It hoped that progress would be achieved during the

meeting towards the convening of a diplomatic conference to consider adopting a treaty on the protection of broadcasters.

90. The Delegation of the United States of America had supported the updating of the protection of broadcasting organizations for the digital age, particularly in regard to the protection of broadcast signals from piracy and extending it to other activities over the Internet. It expressed some regret and disappointment on the wide distances among Member States on fundamental issues regarding the objectives, specific scope and object of protection of the proposed treaty. The prospects for bridging those distances remained remote. Nonetheless, the Delegation was willing to keep discussions on the protection of broadcasting organizations on the agenda of the Committee and remained mindful of the Chair's wise counsel that the Committee might need at some point to take a decision to avoid further spending of time, energy and resources to no avail. It appreciated the extra effort and creativity shown by the Chair in suggesting two possible ways forward to the Committee, although not specifically directed to do so under the March 28, 2008 decision for the informal report, and was still in the process of analyzing the advantages and disadvantages of proceeding under either option by listening carefully to the views of other delegations before reaching a final determination. Nonetheless, whichever road the Committee in the end decided to follow, it believed there were certain essential signs and milestones. First, the Delegation reaffirmed its firm commitment to proceeding on the well established principle of consensus within the Standing Committee which had served well over many years. Against that background, under Option A, the Delegation opposed continuing deliberations on the proposed treaty on the basis that there could be an understanding that a new treaty might be established by a clear majority. Second, it expressed some concern that the Chair's informal paper might be interpreted in a way that failed to capture, with the necessary precision, the agreement reached at the May 2006 meeting of the Standing Committee regarding proposals for the protection of webcasting and simulcasting. As members of the Committee might recall, with a view towards facilitating consensus to recommend to the 2006 General Assembly the convening of a diplomatic conference, the Delegation had agreed to temporarily limit the scope of the treaty to the protection of traditional broadcasting entities, that was, cablecasting and traditional broadcasting entities, whereby simulcasting and webcasting were excluded from the scope of the treaty text at that time. Based on that May 2006 Committee consensus the WIPO work was to focus on concluding a draft treaty text that protected traditional broadcasting organization, while placing on a separate slower track discussion of webcasting and simulcasting. However, if a consensus failed to develop on a sufficiently stable text to move to a diplomatic conference in 2007, the Delegation expressly reserved the right to reintroduce netcasting into the treaty. More fundamentally, it believed that to ignore issues relating to broadcasting in the Internet would be to set the Committee on a course to crush the treaty designed to solve the problem of the 20th Century. To more actively reflect the consensus reached at the May 2006 committee meeting, the Delegation would offer a few written amendments to paragraph 14 and 29 of the Chair's informal proposal.

91. The Chairman explained that the informal document did not fully reflect what had been mentioned by the Delegation of the United States of America in 2006, when the webcasting or netcasting had been set aside. However, previous drafts showed that the overwhelming majority of delegations seemed to be of the opinion that webcasting should not be discussed together with the protection of traditional broadcasters and cablecasters. There were two tracks and two different speeds. The growing interest in considering the question of webcasting and, at least, the different methods of transmissions and communications in the digital network environment, was, however, also to be noted.

92. The Delegation of Ukraine stated that the treaty protection should be on a signal-based approach and favored Option A of the Chair's paper. It hoped that progress would be made toward the convening of a diplomatic conference.

93. The Delegation of Iran said that, despite the vast difference of opinions, it supported the retaining of the broadcasting issue in the agenda of the SCCR and the decision of the General Assembly should be the base for any alternative practical way to facilitate the discussion. Any negotiation should be carried out on a consensus based approach.

94. The Delegation of Australia considered that broadcasters should benefit from protection in a new treaty for their role in giving access to information, entertainment and education. To deny broadcasters the protection against Internet retransmission was tantamount to diminishing their ability to carry out their role in the digital environment. The Committee needed to find a way forward on that issue. One useful option might be that some broadcasting experts drawn from various countries with different levels of development be invited to make presentations to the Committee to speak about retransmission on the Internet as well as new emerging issues in the area of broadcasting.

95. The Delegation of the Russian Federation urged the Committee to continue the work on trying to reconcile positions. The Chairman's paper not only brought together the work achieved so far but also proposed a couple of options for possible future work on the protection of the rights of broadcasters. Regarding the options in that informal paper, the Delegation favored Option A, but at the same time, it was open to discuss other proposals as well.

FUTURE WORK OF THE COMMITTEE

96. The Chair drew the attention of the Committee to unfinished business and the future work of the Committee, most of which had been reflected in paragraphs 52 to 172 of the report of the sixteenth session of the Committee. Attention was also drawn to an official working document issued that morning, Justifications for Topics Proposed as Future Work by the European Community and Its Member States, document SCCR/17/4, elaborating the European Community's suggestions presented in the previous session of the Standing Committee. The Chair reminded of the need to give priority to work, and cautioned against posing an excessive workload on the Secretariat and placing too many items on the agenda. He urged the Committee to focus on resolving outstanding issues such as stocktaking of audiovisual performances, protection of broadcasting organizations, exceptions and limitations as mandated by the General Assembly and then to focus on the future work. He acknowledged the presence of the Director General at the meeting and invited him to take the floor at any moment.

97. The Delegation of France thanked the Chair for very rightly underlining the proposals made by the European Community and its member States on the new subjects. It pointed out that several states had expressed interest in some of the subjects that were presented by the European Community and its member States in document SCCR/17/4. The Delegation was eager to provide any background information if required, and was equally willing to exchange opinions and comments with the Committee.

98. The Delegation of Algeria, speaking on behalf of the African Group, thanked the European Union for its proposal in document SCCR/17/4. The Group was of the view that

the current agenda of the Committee contained a number of points that needed examination, and the Committee's first priority should be to settle pending issues. Placing new issues on the Agenda of the Standing Committee would be premature at the present stage.

99. The Delegation of Cuba, speaking on behalf of GRULAC, remarked that the Committee should give priority to discussions on the three topics of exceptions and limitations; audiovisual performances and the protection of broadcasting organizations to commensurate with the mandate of the General Assembly, and reiterated that those were topics that were extremely important for all members of GRULAC. The possibility of addressing other future issues was also welcomed. The Delegation called for placing on record the urgent need to improve access for people with disabilities to cultural goods.

100. The Delegation of China emphasized that all discussions in the Committee related to copyright and neighboring rights were relevant, and welcomed discussion on all proposals in that area. It considered the proposals by the European Community on future works, artists' resale right and orphan works very important, and mentioned that it had originally desired to include those subjects in its working group as well. The subject of collective management was very critical as well. However, it was concerned that the Committee had not made much progress in discussing the subjects of exceptions and limitations, protection of audiovisual performances and the rights of broadcasting organizations. As adding further topics to the agenda would overburden the Committee in view of the limited time available, it suggested focusing on the unresolved items and arriving at a consensus and concrete results.

101. The Delegation of the Russian Federation, speaking on behalf of the regional group of Central Asia and the Caucasus, supported that the content of the document presented by the European Community and its member States could well constitute the basis for the Committee without endangering the work on the protection of broadcasting organizations.

102. The Delegation of Mexico stressed that the time had come to make progress and to conclude pending work. Towards that end it proposed that the future work of the Committee be focused on analyzing the pending work in the area of protecting audiovisual performances, and finalize the analysis of the objectives, the applications, scope and the subject of protection of broadcasting organizations. It also called for a revision of the basic proposal on the treaty for the protection of broadcasting organizations and the conclusion of negotiations for a future diplomatic conference in accordance with the mandate of the General Assembly. Since negotiations for an international instrument for the protection of audiovisual performances and protection of the broadcasting organizations had been going on for the past ten years, the Delegation suggested that priority be given to those issues and that other issues on the agenda of the Committee be left aside for a later phase.

103. The Delegation of Nigeria concurred with the statement of the Delegation of Algeria on behalf of the African group and expressed its desire to see the work of the Committee culminating in a focused and practical manner. Considering the obvious budgetary constraints, it suggested limiting the focus on the three issues already on the table. Putting other important issues on copyright on the agenda at the present point might hinder the work of the Committee. The Delegation recognized the importance of all the issues in the area of copyright as found on the table, but cautioned that the work of the Committee would never finish should they all be taken for discussion.

104. The Delegation of the United States of America stressed that in considering the future work of the Standing Committee, it was an appropriate time to begin reflecting on the

principles that had been formed based on the past work of the Committee. The contributions of the Committee in advancing the mission of WIPO and in promoting the protection of intellectual property throughout the world had been built on a sound foundation of well-established principles and procedures, which in turn had fostered an environment of trust and respect within the Committee. As the Committee looked forward to its future work, it was important to reaffirm some principles that underlay those procedures. It was important for the future work of the Committee that it remained Member State-driven, while informed of the views of the widest range of organizations including intergovernmental organizations and non-governmental organizations as well as other interested parties. There was also a need to remain consensus-based and balanced, beginning with the exclusive rights of authors while taking into accounts the appropriate exceptions and limitations. There was a need to be fully transparent and logically structured; proceeding through stages of careful preparation, sustained and informed discussions, leading to the full extent of possible concrete outcomes. Against that background, the Delegation was pleased to share its thoughts on the future work of the Committee. With respect to exceptions and limitations, the Delegation looked forward to sharing national experiences on copyright exceptions and limitations, and believed that such an exchange would be enhanced by the Secretariat by obtaining additional information from Member States on domestic exceptions and limitations. The Delegation hoped to see more concrete details in the next session with the possibility of a stakeholder forum taking place. The issue of a treaty for the protection of the broadcasting organization should remain on the agenda of the Standing Committee, and it would be useful to convene sessions to set forth the views on the nature, scope and object of the protection of that proposed treaty. The important treaty on the audiovisual performances should remain on the agenda of the Committee, and it would be useful to convene an informative session on the principal provisions of such a treaty, along with updated information on possible approaches to bridge differences on the difficult issue of transfer of rights from performers to producers. Responding to the proposals by the European Community and its member States, the Delegation was prepared to support future work on artists' resale right, orphan works, collective management of copyright and applicable law. The Delegation looked forward to hearing more details about collective management and applicable law as well.

105. The Delegation of Japan underlined the general consensus on the need to give priority to unfinished business, particularly concluding a treaty on the protection of broadcasting organizations and a treaty on the protection of audiovisual performances. It also agreed that some important issues highlighted in the proposals by the European Community and its member States were of interest, and it was therefore supportive of further discussions on how to deal with them.

106. The Delegation of Brazil was satisfied that the discussions on limitations and exceptions and the protection of performers and protection of broadcasting organizations were at a high level, but lamented that the Committee was not reaching consensus on those issues. It was concerned that the current agenda items of the SCCR had not been sufficiently discussed, and it therefore concurred with the declaration of GRULAC and agreed that the inclusion of new topics on the agenda was premature. The Delegation therefore proposed that the Committee gave priority to the outstanding items on the agenda before discussing new issues.

107. The Delegation of Chile, speaking in support of the statement made by GRULAC, urged the Committee to focus on the issues that were currently on the agenda, in particular on exceptions and limitations, taking into account some of the conclusions that had been mentioned during the briefing sessions.

108. The Chair noted that the discussions reflected almost a total consensus on how the work should proceed concerning pending issues such as a treaty on audiovisual performances, a treaty on the protection of broadcasting organizations and the on-going works on limitations and exceptions, while there was a clear reluctance towards proposing new items on the agenda. He additionally noted that nothing negative had been raised regarding the items for future work proposed by the European Community.

109. A representative of the Arab States Broadcasting Union (ASBU) thanked the Chair for having prepared the non-paper which contained a summary of the agreements, disagreements and the various positions taken within the Committee in 10 years of work. There was a need to accelerate work towards a new international instrument to better protect broadcasting organizations, particularly with regard to the illegal use of signals and piracy, and in the context of economic competition. The representative supported the suggestion by the African Group to organize a special information meeting during the next session to listen to the views of independent and objective experts on the subjects under discussion. In light of the speed at which technological development was taking place in radio, broadcasting or television, the information sessions could lend some efficiency to that deadlock. He agreed with the opinion of the majority of delegations in not adding new items to the Agenda, but to focus on the pending issues, particularly the protection of broadcasting organizations which was one of the oldest subjects that had been addressed in that Committee.

110. A representative of Actors, Interpreting Artists Committee (CSAI) reiterated that merely maintaining the protection of audiovisual performances on the agenda was not sufficient. What was necessary was to go into the details of the situation in each country and region so that each party could pursue consensus to come up with an international treaty that would allow uniform and minimum requirements for the protection of the artists. The symposiums and conferences mentioned in the information session the previous day had only indicated the need to protect the interest of those performers. The Standing Committee itself had reiterated several times that there was a need for international acknowledgement of the rights for performers separate from the exclusive rights of the producers. Despite the fact that the Diplomatic Conference of 2000 failed to reach a consensus for an international treaty on audiovisual performances, the protection for audiovisual performances was still necessary. The representative requested the reopening of discussions on the protection of performers within WIPO and an examination of the technological advances that had taken place in the past years that had ushered new forms of exploitation of the works and new forms of audiovisual recordings. It was necessary to establish regional and international norms to avoid illegal exploitation. He stressed the necessity to continue discussions to enrich awareness and achieve the consensus in a definitive manner for an international treaty to protect audiovisual performances and thereby putting an end to so many years of unjustified discrimination against those performers and rightholders.

111. A representative of the Ibero-Latin-American Federation of Performers (FILAIE) recalled that when it was not possible to achieve consensus to protect audiovisual performances at the 1996 Diplomatic Conference, a statement was made using words like 'we regret' because the Conference had been very close to reach a consensus and yet did not achieve it. In 2000 there had also been a similar failure. In the current situation what was needed for the audiovisual performances was a balance between the rightholders. The Rome Convention gave rights of authorizing or prohibiting to the producers and broadcasters. Article 7 of the Rome Convention gave the faculty, not the right, of preventing. The Rome Convention was designed to benefit performers, but in Article 19 it established that when performers accepted to record in an audiovisual form they lost all the rights of Article 7. In

Article 14 of the TRIPS Agreement there was protection for phonogram producers but not for audiovisual performers, and the WPPT reflected the same situation. He also stressed the need for minimum protection for broadcasters.

112. A representative of the German Association for Intellectual Property and Copyright Law (GRUR) welcomed a new initiative from WIPO for the conclusion of a new international treaty on the protection of the signals of broadcasting organizations through some early convening of a diplomatic conference. First, the treaty should be named the WIPO Treaty on the Protection of Signals of Broadcasters; second, the scope of application of the new treaty should be in accordance with the Rome Convention as well as the Brussels Convention relating to the Distribution of Program-Carrying Signals Transmitted by Satellite (the Satellites Convention), which meant limited to the signals of the broadcasting organizations. As proposed in Article 16 of the draft, it was important to include in the protection also those signals used by broadcasting organizations that were not intended for direct reception by the public, the so called pre-broadcast signals. Third, the principle of national treatment should apply for the protection of broadcasting organizations under the new treaty in the same way as under Article 4 of the WPPT, however, the obligation of national treatment should be restricted to the exclusive rights specifically granted in the new treaty. Further rights that contracting parties may then and thereafter grant to their nationals were thus not intended to be covered by the obligation of national treatment. Fourth and last, the scope of protection of broadcasting organization should encompass the right of retransmission as well as the right of communication to the public, the right of fixation, the right of reproduction and the right of distribution as well as the right of transmission following fixation. Furthermore, broadcasting organizations should enjoy the exclusive right of authorizing the making available to the public of their broadcast from fixations by wire or wireless means in such a way that members of the public may access them from a place and a time individually chosen by them.

113. A representative of the International Federation of the Association of Film Distributors (FIAD) repeated the organization's concerns for moving forward in order to rapidly conclude treaties on the protection of audiovisual performances and broadcasting signals in a pragmatic and realistic fashion. He cautioned that the various positions taken by the various delegations could run the risk of overburdening the Committee. He also reminded that it was only natural that seeking a consensus took time and entailed effort and could sometimes be discouraging without getting into the details of the text.

114. A representative of the International Federation of Associations of Producers of Films (FIAPF) noted that most delegations agreed that without a framework for IP protection a treaty on the rights of broadcasting organizations would remain incomplete. There remained very substantive issues to be resolved before the Committee could recommend going forward with a diplomatic conference, but the Chair's paper had in a thorough manner laid out the salient unresolved issues objectively. She took comfort in what appeared to be the convergent views of many delegations about the need to avoid overlapping protection by granting rights to broadcasters over and above what they would require strictly in order to protect their signals effectively. Rights in the contents supplied to the broadcaster should remain firmly vested in the producers and suppliers of that content. If the boundaries between the two areas of protection would be clearly drawn out the treaty would be a welcome complement to the existing anti-piracy protection. The SCCR should not go forward with the issue on a majority basis but on the basis of full consensus. Regarding a possible international instrument on audiovisual performers' rights, reference had been made to the 19 articles on which a consensus was alleged to exist at the 2000 Diplomatic Conference. It was difficult to believe that that alleged consensus would or should still be taken for granted. If Member States were

to go forward on the issue, the appropriate approach would be to take a fresh look at all the original articles. FIAPF's position regarding transfer of rights remained that audiovisual producers needed legal certainty, because of the substantial financing required to make and distribute films. So an audiovisual performers' treaty should contain provisions for the disposition of performers' rights, accompanied with provisions for equitable remuneration. As to the shape and boundaries of such provisions FIAPF remained open for constructive discussions.

115. A representative of the International Federation of Actors (FIA) stated that intellectual property rights for performers were important, in particular in view of the often very sporadic and insecure employment opportunities performers had. Long term job security was very rare and more often than not work was scattered over a day or two or four on an audiovisual production. The question performers keep asking themselves was why performers in audiovisual productions should not share the same rights granted to other creators such as writers and composers. Considering that the recorded performance and its continued exploitation long outlived those periods of paid employment, and considering the performers' need to sustain such an existence in such a difficult industry, they should have rights to fair and decent compensation from the continued exploitation of their performances across all media platforms. Audiovisual performances were now made available on demand to viewers around the world and channeled to them when and where they liked, but many performers received little or no income from such exploitation of their work. In addition, they were very concerned at the growing ease with which their images and the integrity of their work could be manipulated and distorted in the on-line environment. It was essential for WIPO to keep the audiovisual performances treaty on the agenda of the Standing Committee to enable Member States to move forward. WIPO should consider commissioning an empirical study clarifying what real need, if any, there was for a clause on transfer of rights in the audiovisual performances treaty. He urged Member States to work towards the adoption of a treaty consisting of the 19 articles that were provisionally approved in the year 2000 and which constituted acceptable terms for a treaty.

116. A representative of the European Broadcasting Union (EBU) stated that the organization had received information from the organizers of the Olympic Games in Beijing that almost 8,000 incidents of broadcast piracy had taken place. The overwhelming majority had been piracy via the internet. Such infringements caused significant harm all over the world to broadcasters which had invested billions of dollars or euros in that event to the benefit of the public in all corners of the world. That figure confirmed also the sad reality that broadcast piracy had become a mass phenomenon. Broadcasters had explained that to the Committee more than 10 years ago. To stop that piracy virus from spreading out further and ultimately breaking down the broadcasting system, immediate legislative action was needed. Exclusive rights were required and without such rights a WIPO treaty would no longer be worth pursuing, in other words option B in the Chair's paper was no option for broadcasters, it would simply not lead to any useful instrument. Exclusive rights were well known to be effective to combat all types of broadcast piracy and signal theft, whether over the Internet or otherwise. If the Committee was not prepared to engage itself in taking that approach as a starting point, it should be honest to itself and openly admit that it was not ready for a meaningful broadcasting treaty.

117. A representative of European Digital Rights (EDRI) believed that a broadcasting treaty was not necessary, because copyright and related rights already provided satisfactory remedies for broadcasters, and it would also apply when the content was not protected by copyright law, an extension of the protection that was not needed. The market consequences

of a broadcasting treaty also caused concern. In particular, he opposed the treaty's application to the Internet where user generated content was a continuing trend. There was no reason why broadcasters should be given additional protection in cases the content was produced by the users. WIPO should use its resources on studies regarding long distance learning and innovative services and on the development of a framework for the rights of visually impaired persons. The availability of works for the visually impaired both in developing and developed countries was a question that called for speedy action. So did the protection of consumers' rights in the digital environment which had to be balanced against the protection of rightsowners.

118. A representative of North American Broadcasters Association (NABA) continued to believe that new protection was necessary to take account of the changing technological and economic environment in which broadcasters operated. In February 2009, conventional over-the-air broadcasters in the United States of America would transition to digital transmissions. That move, while offering many valuable enhancements to audiences, would also increase the risks of piracy and misuse. On the economic scene, new technologies were increasingly competing with broadcasters for audience, putting pressure on their revenue base which could eventually jeopardize their ability to provide the valuable public services their audiences were accustomed to. While NABA did not wish to exclude any opportunity for enhancing legal protection of broadcast signals, it had a strong preference for solutions along the lines proposed in option A of the Chair's paper, which would allow at least some rights based protections. The problems facing broadcasters were global in nature and hence most effectively addressed with harmonized global solutions, something the approach in Option B would not offer. NABA was available to collaborate and assist at an information session at the next SCCR on issues relating to the protection of broadcasting organizations.

119. A representative of the International Music Managers Forum (IMMF) was surprised that the broadcasting treaty was still on the SCCR agenda, following the complete lack of consensus following the special SCCR session in June 2007. The Chair and the Secretariat needed to be mindful of the resources that the issue was taking up. The SCCR had been discussing the issue for ten years when there were so many other pressing and more important issues that the Committee could have been addressing, including the very urgent need for a treaty to protect and compensate audiovisual performers. A long overdue reform of collective management, orphan works, and progress on new compensation structures for all copyright stakeholders on the Internet were all important and pressing issues that the Committee should address. The General Assembly had agreed that the Committee should look at finding a signal based conclusion to the proposed broadcasting treaty and most people took signal based to mean no exclusive rights. To avoid piracy all the broadcasters needed was protection of their signals. The producers of audiovisual works clearly needed certainty concerning their investments and therefore, quite understandably, needed the transfer of rights in the included audiovisual performances. The performers, on the other hand, had exceedingly weak rights in their audiovisual performances which urgently needed to be rectified. They also needed to be assured that they would be properly compensated for such a transfer. He appealed to all parties and Member States to engage in that issue as the top priority in a spirit of compromise and ensure a protection at the same level as the WPPT. Such a treaty was far more achievable in a comparatively short period of time and indeed far more necessary.

120. A representative of Knowledge Ecology International (KEI) supported continued work on exceptions and limitations and stated that access for disabled persons had to be given priority. The World Blind Union had petitioned WIPO consistently on that topic since 2002 and it was therefore time to address the human rights of disabled persons. The broadcasting

treaty had to be removed from the agenda of the SCCR until larger consensus could be reached. The SCCR had to address in a more comprehensive manner the issue of performers' rights and could gather data and statistics on the distribution of income from performances and on the factors that influenced the distribution of revenues to performers. Alternative remuneration had to be envisaged in view of the limited enforcement of exclusive rights. Orphan works could also be included in the agenda of the SCCR:

121. A representative of Consumers International (CI) supported as a priority the proposals submitted by the World Blind Union and expressed limited support to the discussion on the protection of broadcasting organizations. Several provisions would create new limits on the rights of consumers to use knowledge goods and would undermine important limitations and exceptions in traditional copyright laws while building barriers for innovation and increasing opportunities for anti-competitive practices. A work program on broadcasting that could begin with data gathering could be envisaged and that would be in line with the WIPO Development Agenda which called for such evidence-based work. The next SCCR could discuss the type of studies that could help better understand the nature of the broadcasting industry and the impact of different norm-setting exercises. It would be useful to include the European Community's proposal on orphan works in the work program on limitations and exceptions, proposed by the Delegations of Brazil, Chile, Nicaragua and Uruguay.

122. A representative of Public Knowledge did not believe that a broadcasting treaty was necessary because a large number of national and international instruments on copyright and related rights already granted protection to the respective parties. Difficulties in reaching agreement on a broadcasting treaty over the past several years had extended to include the basic elements within the General Assembly's mandate. The divergence of opinions extended to the objective, the scope and the object of protection of the treaty. Such lack of agreement revealed the difficulty of reaching consensus even on a narrowly tailored instrument designed to address signal misappropriation versus an exclusive rights based treaty. Exclusive rights in a treaty could create an overlap of potentially conflicting rights and interests that could hamper end users in their ability to make legitimate use of information. Subject areas for the future work should include exceptions and limitations for the visually impaired, libraries and archives, education including distance education, orphan works and other critical issues. Exceptions and limitations were pressing issues in the field of copyright in line with the SCCR's role in supporting WIPO's development agenda.

123. A representative of the National Association of Broadcasters in Japan (NAB-Japan) recalled that the Chair's informal paper on the protection of broadcasting organizations provided a historical perspective on the negotiations which were unanimously supported when they began. The final stage of negotiations had almost been reached which showed there was some kind of convergence of opinions. Broadcasting was the most important and fundamental communication tool and was now evolving very quickly. Signal piracy on the web had become a common practice and appropriate international protection had become urgent to ensure that the public could continue to get proper information and knowledge: Option A as provided in the Chair's informal paper was the preferable way forward.

124. A representative of the Association of European Performers' Organizations (AEPO-ARTIS) welcomed the re-opening of discussions by WIPO regarding performers' rights in the audiovisual field at international level and the fact that the issue was maintained on the agenda of the SCCR. It showed appreciation for the very valuable and indispensable working sessions, studies and other works that had been conducted over the last months at national and regional level. This could be considered as a positive new impulse towards the

possible improvement of the situation of performers' rights in the audiovisual field at international level and the possible adoption of a treaty. The work towards the adoption of such a treaty had been suspended at the end of the Diplomatic Conference of December 2000, which had failed to reach an agreement. Today, a number of issues, including issues on the substance of performers' rights required further discussion. Since 2000, a number of changes in national and regional legislation as well as economic development had occurred, such as the importance of the digital audiovisual environment and related use of performances which had continued growing. That new framework needed to be taken into account through the continuing of the discussions in an open spirit underlining all relevant aspects of the topics in the light of today's environment.

125. A representative of the Association of Commercial Television in Europe (ACT) stated that the best way to update the rights of broadcasters would be by providing exclusive rights within the well understood framework of WIPO international norm setting process. Option A of the informal paper was the preferred option. The organization was ready to assist the Committee in any way and in particular, by participating in an information meeting, to provide further insight into the current conditions of the broadcasting environment.

126. A representative of the Electronic Frontier Foundation (EFF) believed it was a pivotal moment for WIPO's leadership in the global economy, and the Committee had to focus on the restoration of WIPO's role in the promotion of creativity and innovation for the global information society, rather than the promotion of new intellectual property rights. The Development Agenda had pointed the way forwards towards the preservation of the public domain and stimulation of innovation and creativity and development. Member States had been presented with a clear choice and could start working on alleviating suffering for the world citizens and tackling the greatest challenges facing the global copyright regime today, or they could resuscitate discussions on a treaty that, as currently drafted, would protect broadcasters' and cablecasters' investments while causing considerable harm to consumers, competition and innovation by granting broadcasters broad intellectual property rights over transmissions after fixation of signals rather than providing them with measures against intentional signal theft. As long as the draft treaty would not be limited to signal protection as mandated by the General Assembly, it would hamper the public access to knowledge and the future of citizen broadcasting and user-generated content on the Internet. The inclusion of legally enforced technological protection measures and decryption devices was likely to override national exceptions and limitations in copyright to protect the public interest and preclude access to public domain works. The treaty would also harm competition and innovation by allowing broadcasters and cablecasters to control the market for transmission receiving devices. After 10 years of negotiations without substantial agreement, the broadcasting treaty proposal should not remain a priority item on the work agenda. Any treaty would have to include mandatory exceptions for socially beneficial users. There was a high level of urgency about finding solutions to those essential needs.

127. A representative of Copyright Research and Information Center (CRIC) stated that the 1996 WIPO Internet Treaties addressed the modern Internet environment but had left aside audiovisual performers and broadcasters. Those two treaties had to be concluded in the near future. Broadcasting organizations provided entertainment, education, and information, especially in developing countries. Internet users were only 20 pct. of the whole population as opposed to the widespread diffusion of broadcasting. Broadcasting organizations were deprived of any means for fighting signal piracy. An international treaty was the minimum international standard required for the world.

128. A representative of the Asia Broadcasting Union (ABU) expressed gratitude to all the delegations for their willingness to negotiate and conclude a new treaty and recalled the urgent need to upgrade the protection of broadcasters at the international level. The fast-changing technological environment had opened new perspectives and had changed the landscape of broadcasting. The protection of traditional broadcasting should now be concluded in order to provide broadcasters the protection that they rightly deserved. Anyone could receive and re-transmit broadcast signals on a live or deferred basis on television, radio, mobile phone, internet, outdoor television and in other media anywhere in the world. Broadcasting organizations had the legitimate right to protect their program carrying signals against all means of re-transmission actually known or that would emerge in the future. The new treaty would not harm the consumers' position nor lock up public domain content. It would block neither fixation, transmission nor the re-transmissions over home or personal networks. Those issues were properly addressed by the proposed exceptions and limitations in the treaty which did not interfere with any of the positive goals of the Development Agenda, as stated by the Chair in his informal paper. Signal piracy affected directly the broadcasters' ability to play their role in the dissemination of information to the public. Theft of signals was not a victimless crime as the illegal practice threatened the jobs of thousands of people in the broadcasting industry who worked to develop, produce and promote television shows. ABU supported Option A presented in the informal paper. That option acknowledged the substantial work, based on government proposals which had been consolidated in a single document, SCCR/15/2 Rev. That document needed to be narrowed down, and that could be achieved not only by an open and inclusive discussion, but by the willingness of governments to work in a constructive spirit.

129. The Chair introduced the draft conclusions of the SCCR which had been distributed (Annex I to this Report). Concluding remarks were always done carefully on the basis of a written draft proposal, and he proposed to proceed chapter by chapter and paragraph by paragraph until the end of the document. He requested the Committee to give comments, raise questions and seek clarifications as a particular paragraph was discussed.

130. The Delegation of South Africa referred to bullet point 2 in the second paragraph on the studies by Nick Garnett which covered about 5 countries, but raised doubt that with the usage of the words "present Member States," the last sentence seemed to assume that it covered the laws of all Member States of WIPO. The Delegation requested the replacement of those words with "selected Member States."

131. The Delegation of Algeria suggested usage of the word "detailed analysis" instead of "comprehensive" in the English version in line with the French version.

132. The Chair agreed with the usage of the word "detailed analysis", instead of "comprehensive" in the English version as well as the Spanish version.

133. The Delegation of Germany sought clarification on a procedural matter which had caused some confusion in its Group. It wanted to know whether, as indicated by the Chair on the previous day, the groups in the first reading were expected to express some general ideas on the draft conclusions produced by the Chair, and whether the Committee was expected to go through the text during the plenary session. The Delegation was concerned that going through the text could be very time consuming.

134. The Chair asked whether groups other than the European Community preferred to proceed with the text or needed time for group consultations.

135. The Delegation of Germany clarified that it was not speaking for the European Community, but was only raising the matter as a Group B sentiment. The European Community would speak for itself.

136. The Delegation of Romania announced that it intended to convene its regional Group to discuss the paper and pending that discussion it was not in a position to make any comment.

137. The Delegation of France mentioned that its Group had already discussed the paper and was ready to proceed.

138. The Delegation of Algeria sought clarification on the meaning of the word “platform” in paragraph 6 under limitations and exceptions.

139. The Chair clarified that the intended meaning of the word “platform” was to provide meeting services, possibly even moderation of meetings between parties who have different opinions. It was well known that WIPO could provide that kind of services. It was his interpretation based on what he had heard from discussions and seen in room papers. The intention of the paragraph was to reflect the special needs and treatments of the disabled persons that were accorded in some legislation under the broad heading of limitations and exceptions. The Chair then drew the attention of the Committee to paragraph number 4.

140. The Delegation of Romania inquired in relation to paragraph 4 whether it would be possible for an updated study to be provided before the next SCCR session.

141. The Chair invited governments to submit supplementary information. The Secretariat would then be in touch with the experts and consider with them the missing aspects, the need to update, the gaps, and capture whatever was not captured in the first versions of the study. The Chair reminded that the deadline was 1st February 2009, and recalled that the meeting of the SCCR was scheduled for May. He also stressed that updating was sometimes possible and sometimes not. WIPO had consulted high level experts who were busy in their respective areas of expertise, and WIPO always knew who could be consulted, and who was available for doing the updating. He assured that the Secretariat would endeavor to do its best.

142. The Delegation of Pakistan, speaking on behalf of the Asian Group, agreed that most of the contents of the Chair’s paper correctly reflected the discussions. It would only make preliminary comments and, since some of its members were not around, would make a final comment in the afternoon. In the last line in paragraph 5, the Delegation suggested replacing the phrase “and that it should include”, with “in particular for.”

143. The Delegation of Germany inquired at which stage of the session the Committee was, since the Delegation of Pakistan seemed to be making some concrete proposals in the name of a general statement, and at the same time mentioned that it would be making a specific amendment as well in the afternoon.

144. The Chair clarified that the Committee was proceeding towards adoption of a conclusion by making the necessary changes that could meet a consensus. Once detailed changes had been made, the Committee could adopt the text. He had allowed any general interventions on any matter.

145. The Delegation of Pakistan, responding to the Delegation of Germany, clarified that the Asian group would be happy to go along with all the amendments that had been proposed, but it also made it clear that the text might evolve with changes in view of the discussions, and those changes needed consultation.

146. The Chair encouraged the Committee to focus on the wording of the proposals. The conclusions should reflect as accurately as possible the essence of the discussions.

147. The Delegation of the United States of America expressed satisfaction with the draft conclusions as an accurate reflection of what had taken place, and that it carried a balanced statement of the way forward for the Committee. The Delegation suggested the replacement of the phrase “stressed the importance of” in paragraph 5 with “noted with approval the forthcoming study” in an effort to strike greater precision.

148. The Chair welcomed the replacement of the wording in paragraph 5 since it was in relation to a decision that had been made in the March meeting.

149. The Delegation of Algeria, speaking on behalf of the African Group proposed to amend a sentence in paragraph 6 with the following words: “It would be appropriate to carry out analysis of limitations and exceptions and to envisage the possibility of establishing a stakeholders platform at WIPO” and to delete the rest of the sentence.

150. The Chair agreed with the proposal by the Delegation of Algeria to shorten paragraph 6.

151. The Delegation of Pakistan, speaking on behalf of the Asian group, suggested deletion of the word “undue” in line 2 of paragraph 6 and suggested using the following sentence in paragraph 6, “The Committee acknowledges the special needs of visually impaired persons and stressed the importance of dealing with, without delay, those needs of blind, visually impaired and other disabled persons, including discussing at the international level possible ways and means of facilitating and enhancing access to protected works” after the phrase “visually impaired and other disabled persons” and to delete the rest of the paragraph.

152. The Delegation of Brazil suggested continuing paragraph 6 with the following wordings: “The SCCR took note of the proposal presented by the World Blind Union and many delegations expressed interest in further analyzing that proposal.” The Delegation clarified that the language proposed would not commit any delegation to the World Blind Union’s proposal but would only acknowledge the efforts made by the World Blind Union and recognize all the discussions held throughout the week with the representatives of the World Blind Union in the bilateral meetings and regional group meetings.

153. The Delegation of New Zealand opposed the suggestion made by Algeria to delete the second half of the second sentence, as it was actually quite a useful part. The Delegation suggested inserting a specific reference to the issue of the import and export of accessible copies as that was an area that had been identified as a significant problem, not only in the study by Judith Sullivan but also by government Delegations and the representatives of the visually impaired. The Delegation further suggested adding the words “...including through the international exchange of material in accessible formats” at the end of the second sentence.

154. The Delegation of Chile emphasized that the conclusion should in some way reflect the support given by several delegations. It also supported the suggestion of the Delegation of Brazil to include some wording within paragraph 6.

155. The Delegation of the United States of America suggested the adding of the following language in line 2 in paragraph 6 “with appropriate deliberation and without undue delay” but did not support the Asian Group’s proposal to delete the word “undue”. In the second sentence of paragraph 6, the Delegation suggested adding, after the word “exceptions”, “at the national level” in order to capture more accurately the discussions and the agenda before the Committee. The Delegation also suggested the insertion of the word “reading” before the word “disabled” in the first sentence of paragraph 6.

156. The Delegation of Germany stated that the thrust of the sentence suggested by the Delegation of Brazil was already captured in the paragraph.

157. The Delegation of Mexico had wanted the proposal by the World Blind Union to be discussed under the topic of limitations and exceptions, and urged for that discussion to be appropriately reflected in the document.

158. The Chair agreed to consider the proposal by the Delegation of Mexico since many other delegations had also expressed interest in further analyzing the proposal of the World Blind Union.

159. The Delegation of Cuba concurred with the proposals by the Delegations of Brazil, Chile and Mexico to ensure the paragraph reflected the proposal made by the World Blind Union.

160. The Delegation of France sought clarification on the methodology employed by the Chair in discussing the text. The Delegation wanted to know if the Chair was examining the text of the discussions paragraph by paragraph or if the amendments by the Delegation of France were also being taken into consideration as they went along. The Delegation wanted to know at what stage of the drafting it should intervene with its inputs.

161. The Chair explained that following the collection of all the amendments and proposals, they would be solved one by one and finally the Committee would adopt the text on the basis of consensus. Five paragraphs had been adopted so far, and the Committee was moving into paragraph 6.

162. The Delegation of Uruguay, while congratulating the Chair in preparing a very balanced document, endorsed the proposal made by the Delegation of Brazil and supported by other Delegations as well.

163. The Delegation of Egypt sought clarification whether the insertion of the words “visually disabled persons” as suggested by the Delegation of the United States of America, would set aside other categories of disabled persons. It had been a long-standing commitment from the African Group that it should be extended to other categories of disabled persons as well.

164. The Chair clarified that the topic in the interventions and in the document that had been published by the World Blind Union referred to the visually impaired people, and there had been suggestions to extend considerations to other disabled persons, as in the case of the

suggestion by the Delegation of the United States of America to include people with reading disabilities as well. The text was generally understood to be referring to any disabled persons. Since paragraph 6 would be most time consuming with so many proposals, the Chair suggested going through the rest of the paragraphs and reverting to paragraph 6 later.

165. The Delegation of Algeria suggested the first sentence in paragraph 7 should read as follows: “In order to further complement the information available on limitations and exceptions in national systems, the Secretariat will prepare a draft questionnaire which will be submitted for comments to the Member States.” The Delegation suggested that the draft questionnaire in the French text be referred to the same way as in the English version.

166. The Chair agreed with the submission of the draft questionnaire, as proposed by the Delegation of Algeria.

167. The Delegation of Chile, speaking on behalf of the Delegations from Brazil, Chile, Uruguay and Nicaragua, thanked the Chair for consenting to include the questionnaire in the document but stressed that the paragraph should contain a more complete version of their requests. The Delegation requested that the document reflect that the proposal by those Delegations was supported by a broad majority of other delegations in the Committee, and suggested that the paragraph also mention the main areas to be covered by the questionnaire such as educational purposes, libraries and archives, persons with disabilities and other exceptions relating to digital technology.

168. As for the request for the document to reflect that the proposal by the Delegations of Brazil, Chile, Uruguay and Nicaragua was supported by a broad majority of other Delegations in the Committee, the Chair noted that there was already more than support for that proposal. As for the suggestion made by the Delegation of Chile to include the main areas covered by the questionnaire, the Chair assured that the Committee might convert it into a decision language.

169. The Delegation of Chile reiterated that in order to be consistent with the paragraphs on the protection of audiovisual performances and broadcasting organizations it might be wise to reflect in the document the broad support that its proposal had received.

170. The Chair suggested not referring to the support because it would be implied in the decision itself, and at the end language would be added which would refer to the areas covered by the questionnaire, namely the needs regarding educational activities, libraries and archives as well as for the benefit of the disabled persons and including the questions of the impact of digital technology.

171. The Delegation of Cuba, speaking on behalf of GRULAC, proposed at the beginning of paragraph 7 the inclusion of a reference to the fact that most delegations agreed on a questionnaire.

172. The Chair reiterated that if the conclusions were adopted, it would imply that all delegations supported the questionnaire. The working version of the text was: “In order to further complement information on limitations and exceptions in the national systems, the Secretariat will prepare a draft questionnaire which will be submitted to Member States for comments before the next session of the SCCR. The areas covered by the questionnaire should be educational activities, activities of libraries and archives, the needs of the disabled

persons as well as the implications of the technological development in the area of copyright.” He noted that the Committee provisionally approved paragraph 7.

173. The Delegation of Argentina asked whether the questionnaire would also be including questions on legislation.

174. The Chair suggested deleting the word “need” from the text, so it would say that the areas covered should be the educational activities, activities of libraries and archives, the provisions for disabled persons as well as the implications of the digital technology in the field of copyright. It seemed that this would be acceptable to the Committee.

175. The Delegation of Japan suggested that the scope of any questionnaire should be strictly limited to what was necessary for discussions concerning the limitations concerning educational activities, activities of libraries and archives, or disabled persons. It would be very cautious about expanding the field of the scope of the questionnaire because it could have much wider impact on other issues.

176. The Chair noted that the planning of the questionnaire would be a demanding task, so the areas covered should be educational activities, activities of libraries and archives, provisions for the disabled persons as well as the implications of the digital technology in the field of copyright. That was broad and it would be the task of the Secretariat to make it manageable. He suggested maintaining the provisionally adopted paragraph 7.

177. The Delegation of France queried whether the deletion of the term “needs” would mean that any initiative, including legislation, would be included in the questionnaire.

178. The Chair confirmed that that would be the case, in order to further compliment the information on limitations and exceptions in national systems.

179. The Delegation of Japan asked for confirmation that it could make further comments and consider the scope of the questionnaire when the draft would be circulated.

180. The Chair pointed out that that was stated in the decision itself. A draft would be prepared and sent for comments to the Member States and the decision implied that after the finalizing of the questionnaire, it would be distributed to fulfill its function as a questionnaire.

181. The Delegation of India suggested that before the suggested language stating the areas covered by the questionnaire should be added the words “should include” in order not to miss out on any areas.

182. The Chair noted that then after the element “the areas covered by the questionnaire” “the words “should be” would be replaced by “should include”.

183. The Delegation of Japan would rather maintain the original text as it would not restrict the areas of comments which could be made against the draft questionnaire.

184. The Delegation of France proposed to add after the words “should include” the words “*inter alia*”.

185. The Chair summarized that India proposed that the areas covered “should include”, thus referring to something open-ended. The comment made by the Delegation of Japan indicated

that the comments on the questionnaire should not be limited to the items that were listed in the proposed text. It was about the same thing, and to add “*inter alia*” after the word “include” would strengthen the open-ended character of the list. That would leave much discretion for the planning of the questionnaire, so much that the mandate given to the Secretariat in the paragraph maybe also should have some limits. The formula proposed by India that the mandate “should include” did not refer clearly to the other things that should be included. “*Inter alia*” would strengthen that aspect and that might open too much in a non-qualitative way and would make it very difficult for the Secretariat to design what other areas should be covered. He asked the Delegation of France to reconsider the addition of “*inter alia*” because “should include” was already open, and the Committee could later decide about further questionnaires.

186. The Delegation of France noted that according to the Chair’s explanations the Secretariat would still have the possibility of going further than the listed elements and that Member States could also do so as suggested in the proposal of Japan. In that case, the term “*inter alia*” might not be needed.

187. The Chair thanked the Delegation of France for its understanding and constructive spirit and noted agreement on the provisional version with the amendment proposed by India “should include” and without “*inter alia*”. He noted that the Committee provisionally adopted paragraph 8 (“After the work in progress...”) and paragraph 9. He opened discussions on the first paragraph of the chapter on the protection of audiovisual performances.

188. The Delegation of Algeria, speaking on behalf of the African Group, proposed to add after “the importance of the exchange of information” “and informal consultations”. “[W]ith the aim of finding a way forward” would remain unchanged.

189. The Chair noted that the amendment put forward by the Delegation of Algeria was accepted.

190. The Delegation of France, speaking on behalf of the European Community and its member States, suggested adding at the end of paragraph 11 the words “and to collect information and proposals on outstanding issues.”

191. The Chair noted that the paragraph, with that amendment, was provisionally adopted, and opened discussions on the first paragraph under the heading “Protection of broadcasting organizations”.

192. The Delegation of Pakistan wished in the first line to delete “who took the floor” and in the next line after “the General Assembly” to write “[a] few delegations showed their interest”.

193. The Delegation of Brazil supported the proposal by the Delegation of Pakistan. At the end of the paragraph the language should be more in line with the language adopted by the General Assembly, saying “and the convening of a diplomatic conference could be considered only after...”.

194. The Delegation of France did think that “a few delegations” as proposed by the Delegation of Pakistan would reflect the discussions and “many delegations” would probably more precisely indicate the number of delegations. Regarding the amendment proposed by

the Delegation of Brazil, the exact wording of the General Assembly should be referred to. On behalf of the European Community and its member States, the Delegation proposed at the end of the paragraph after “has been achieved” to add “on specific proposals by the Chair”.

195. The Delegation of Pakistan asked whether the Secretariat could inform the Committee how many delegations had actually supported the diplomatic conference.

196. Resuming after lunch break the Chair presented a revised text (attached as Annex II to this Report) and reiterated that, in dealing with the conclusions regarding the protection of broadcasting organizations it would be appropriate to proceed in the same way as it had been done before, namely, adopting the text paragraph by paragraph and isolating the paragraphs that were more complex in order to discuss them at the end. Unfortunately, there was no possibility to serve all language versions in the draft under discussion. In the current draft an effort had been made to take into account the proposal by Chile to harmonize the style of the decisions.

197. The Delegation of France, speaking on behalf of the European Community and its member States, emphasized that it had submitted a proposal related to the substance in the first part of the first paragraph which was not found in the new conclusions. The amendment implied adding at the end of the paragraph the expression “on specific proposals by the Chair”.

198. The Chair clarified that the sentence in question was a direct quotation of the General Assembly’s Decision. The second sentence started “the Committee reaffirmed that according to the decision of the General Assembly...” and the rest that followed was exactly what the General Assembly had said. He asked the Delegation of France whether the direct reference to and quotation of the General Assembly’s decision would be acceptable.

199. The Delegation of France expressed understanding of the issues clarified by the Chair and asked whether the amendment could be put under another paragraph under that same heading.

200. The Chair expressed doubt that the suggested amendment could be appropriately placed in other paragraphs. The following paragraph simply reflected the fact that there should be no decision on the method of moving forward as delegations were not willing to make the choice between the options that had been submitted to them. The general tone was that it would be best to leave the choice of main options open and that sentiment was reflected in the paragraph. It seemed that there was a prevailing feeling that that language would be acceptable for virtually almost all. Without concluding on the first paragraph under the heading “Protection of Broadcasting Organizations” the Chair submitted the second paragraph for the consideration of the SCCR.

201. The Delegation of Pakistan indicated that the new draft reflected many of the concerns which had been raised. Regarding paragraph no. 3 under “Protection of Broadcasting Organizations”, it proposed after “current conditions of the broadcasting environment” to add: “with special reference to developing countries and the least developed countries”.

202. The Delegation of Algeria, speaking on behalf of the African Group, proposed to make an amendment to paragraph 3, replacing “in connection with” by “during the next session of the SCCR”.

203. The Chair clarified that during the following Standing Committee an information meeting would take place, in principle as part of the program of the Standing Committee.
204. The Delegation of France suggested that in paragraph 3, starting with “The Committee will continue its analysis” the full stop be suppressed and the following addition be made “... and the Chair of the Committee will prepare a specific proposal.”
205. The Chair observed that the proposal by France would mean that there would be some active preparatory steps in addition to the convening of experts’ presentations on the different aspects of broadcasting. .
206. The Delegation of Pakistan requested clarification from the Delegation of France to assess whether the proposal implied that the Chair would prepare a specific proposal regarding the information meeting.
207. The Delegation of France indicated that the sentence in question currently began: “The Committee will continue its analysis and will request the Secretariat to convene an information meeting” and it proposed to add the text “... and the Secretariat will request the Chair of the Committee to prepare a proposal.” Therefore “and” would come in after “information meeting” but the proposal in question would not be directly linked to the information meeting. The proposal would only be prepared following the information meeting.
208. The Delegation from Brazil requested further clarification regarding the proposal by France. It might indeed prove useful if the Chairman could outline a specific proposal on the information meeting but it would have to be approved before the next session of the SCCR.
209. The Delegation of Pakistan could not understand the explanation from the Delegation of France and whether the proposal by the Chairman would be prepared before or after the information meeting.
210. The Chair suggested first considering the rest of proposals and then concentrating on the proposal by France. He submitted to the Committee the proposal by the Delegation of Algeria, which would replace the words “in connection with” with the word “during”. The text would therefore read “meeting on the current conditions on the broadcasting environment during the next session of the SCCR.” The Delegation of Pakistan had proposed to add after the word “environment”, the text: “with special reference to developing countries and least developed countries”. Regarding the proposal by the Delegation of France it appeared difficult to assess, after several meetings of the SCCR and the General Assemblies of WIPO whether the discussion allowed for the preparation of any new proposal. The discussion at the present SCCR Session did not offer any basis for the formulation of a new proposal on the broadcasters’ issue. If the Committee decided in the future to proceed forward, some reformulation of the proposals or some new proposals might have to appear for the consideration of Member States. If an information meeting would take place at the following SCCR Session, followed by a discussion on substance, a decision on a proposal could then be made. It was clear that France was looking for a methodology to make a continuation of the work happen. The Report could reflect the exchange of views among the delegations with the understanding that if the information meeting and the ensuing discussions during the following meeting of the SCCR clearly allowed it, preparation of a new proposal could take place by then. In that context nothing more would be needed for the conclusions at the current stage.

211. The Delegation of France indicated that the Report should mention that exchange, including the position that the Committee would continue its analysis, review it and, depending on results from such analysis, ask the Chair to prepare a specific document. It was clear that for things not to stop vis-à-vis protection of broadcasters it was important that those considerations be included in the conclusions and perhaps also in the minutes of the meeting.

212. The Chair indicated that the exchange of questions and clarifications would be reflected in the Report. The understanding was clear that the European Community and its member States wanted the issue to be subject to concrete measures in order to find a way forward. It seemed that the whole first paragraph could then be adopted, likewise the second paragraph and then the third paragraph, which had already been pronounced during the moment of reflection accorded to the Delegation of France. The chapter on future work was now submitted to the consideration of Member States.

213. The Delegation of Chile stated that the conclusions reflected the consensus reached during the discussions. On the point of future work, the expression “work in progress” could be interpreted as a limitation of the scope of work and, therefore, it was suggested to delete the words “in progress”.

214. The Chair agreed in that those words were unnecessary. It would suffice to refer to the outstanding issues of the protection of audiovisual performances, protection of broadcasting organizations and limitations and exceptions.

215. The Delegation of Algeria, speaking on behalf of the African Group, suggested retaining the order of the topics of the three agenda items in line with the Agenda. In that context protection of audiovisual performances should precede protection of broadcasting organizations.

216. The Delegation of Pakistan, speaking on behalf of the Asian Group, proposed an addition of four words in the first line, which would read as follows: “The Committee shall in its forthcoming sessions give priority to and an adequate emphasis on the outstanding issues of...”

217. The Chair noted that the proposals by Pakistan, Algeria and Chile were generally accepted and therefore approved. Also the text on the following session of the SCCR seemed acceptable. Returning to the chapter on limitations a new version of paragraph four was submitted. It read as followed: “The Committee acknowledged the special needs of visually impaired persons and stressed the importance of dealing expeditiously and with appropriate deliberation with those needs of the blind, visually impaired, and other reading-disabled persons, including discussions at the national level on possible ways and means facilitating and enhancing access to protected works. This should include analysis of limitations and exceptions. This should also include the possible establishment of a stakeholders’ platform at WIPO, in order to facilitate arrangements to secure access for disabled persons to protected works. A number of delegations referred to a paper presented by the World Blind Union (WBU) and expressed interest in further analyzing it.”

218. The Delegation of Algeria requested clarification whether the expression “reading disabled persons” included deaf persons

219. The Chair replied that reading disabled persons did not include deaf persons.

220. The Delegation of Pakistan requested a correction in the way the conclusions reflected the position of the Asian Group regarding the paragraph on limitations. In line three of the paragraph towards the end where it read, “including discussions at the national level on possible ways and means” the word “national” should be replaced by “international”.

221. The Chair wondered whether it should not be both national and international. Regarding trans-frontier circulation of goods and services international talks were needed, but national measures were also needed.

222. The Delegation of Pakistan accepted the expression “national and international”.

223. The Delegation of Algeria, speaking on behalf of the African Group, proposed to amend the third line where it read “...and other reading disabled persons...” and to add, “as well as other persons who suffer from disabilities that directly prevent them from access to protected works”.

224. The Chair indicated that the proposal made by the United States of America required that the word “reading” be added as qualifying the disabled persons and that of course narrowed it down to disabilities having something to do with how people see things, namely, being totally blind, visually impaired or having other difficulties in reading, such as dyslexia and other conditions which made it difficult to read. The consideration would be that the language had been limited in that way in order to have a quick start for the blind and visually impaired. Of course the government delegations thought in terms of all peoples with disabilities, but opening the project immediately to all disabilities would not only double but triple the workload which was already quite considerable. The Chair asked the Delegation of Algeria whether it could consider a quick start with the visually impaired with the understanding that other disabled persons would in due course be taken into account, as later decided by the SCCR. In that case language would remain as it was.

225. The Delegation of Algeria indicated that the African Group liked an inclusive approach rather than an exclusive one.

226. The Chair stated that the proposal by the African Group pronounced by the Delegation of Algeria was under consideration. As there were few items left it was possible to solve that matter and come to a smooth conclusion.

227. The Delegation of Pakistan stated that, in a spirit to reach a consensus on a possible solution, it agreed with what the Delegation of Algeria had said regarding the inclusion of people with disabilities as well as other disabilities. The explanation given the Chairman exactly reflected what the opinion of the Committee was. The time was right for moving on this issue of visually-impaired people. The other issues were not excluded and they would be taken into account at a later stage. If that explanation was reflected in the report of the Committee, then there should be no concern.

228. The Chairman asked the Delegation of Algeria and the African Group whether the decision could be confined to the visually-impaired provided that, in a transparent manner, the special needs of other disabled persons were taken into account.

229. The Delegation of France expressed flexibility regarding the question of only mentioning the visually-impaired. However, the Delegation said it had some difficulties in

seeing its suggestions in the new text of conclusions, so the European Community and its member States would have a clear preference for going back to the original paragraph of the morning's conclusions. There were two minor amendments to the original text. The first one would have been to delete "undue" in the expression "without undue delay" and the second amendment would have been to change "platform" into "mechanism," as suggested by the Delegation of the United States of America. If, however, it was difficult to go back to the original version, the Delegation would have many amendments to propose on the new version.

230. The Chairman asked the Delegation of France to propose its suggested amendments to the new text of conclusions.

231. The Delegation of France proposed that in the first sentence the word "expeditiously" be replaced by "without delay." On the rest of that sentence, the phrase should stop after "visually impaired" so that the rest of sentence would be deleted right up to "protected works." The phrase including "discussions" up to "protected works" did not seem to reflect the discussions. In the second sentence, it proposed to delete the end of the sentence as from the word "including" so that the whole phrase that said "including their application to the international exchange of materials in accessible formats" would be deleted. Then, in the first sentence, it proposed to replace the word "platform" by "mechanism." And finally, the last sentence that read "The SCCR took note of the paper" should be deleted.

232. The Delegation of Egypt referred to the issue of qualifying disabled persons. There was a degree of flexibility given the fact that what had been stated about the rest of disabilities would be kept in the records. The Delegation was inclined to agree with the language proposed in the revised draft conclusions.

233. The Delegation of United States of America said that discussions had referred to the important special needs of the blind, visually impaired, and reading disabled and thanked the constructive and pragmatic approach of the Asian Group and the Delegation of Egypt.

234. The Delegation of Algeria said that the African Group was quite comfortable with the Chairman's proposal to reflect the discussions in the report and that, at the appropriate time, the subject of other disabilities would be discussed. It also proposed that, in the third line from the bottom, the phrase "in order to facilitate arrangements" be deleted.

235. The Chairman noted that the proposition made by the Delegation of Algeria was to delete "in order to facilitate arrangements" in the third line, from the bottom. It seemed that the amendments were not overlapping so the Committee could deal with them one by one. In the second line, the word "expeditiously" had to be replaced by "without delay." In the third line, there was a proposal to delete after the word "impaired" the rest of the sentence "and other reading disabled persons including discussions at the national and international level on possible ways and means facilitating and enhancing access to the protected works."

236. The Delegation of Pakistan recalled that the Committee was discussing the needs and proposals on what should be done at the national and international levels on the possible ways and means to facilitate and enhance access. The Delegation found it difficult to understand the rationale for removing the sentence as proposed by the Delegation of France. The issue of the visually impaired and blind persons had come for the first time for consideration during the meeting.

237. The Chairman noted that there was no consensus on deleting the second half at the end part of that first sentence.

238. The Delegation of Algeria, on behalf of the African Group, supported the statement of the Delegation of Pakistan.

239. The Chairman noted that the Delegations of Pakistan, on behalf of the Asian Group, and Algeria, on behalf of the African Group, had stated their position that the last part of the first sentence should be maintained.

240. The Delegation of France, on behalf of the European Community and its member States, referred to the Delegation of Pakistan's statement, and maintained its wish to see the part of the phrase deleted.

241. The Delegation of Cuba, in its national capacity, endorsed what had been said by the Delegation of Pakistan on behalf of the Asian Group and by the Delegation of Algeria on behalf of the African Group.

242. The Delegation of Pakistan admitted that it had proposed the deletion of certain lines of the conclusions during the morning session but agreed with the revised text presented by the Chair. Any amendments or arrangements made in the morning session were no more valid. Also, the issues at both the national and international level had been raised in a number of interventions by the Member States, so it would be wrong to say that the Committee had never talked about those issues.

243. The Chairman noted that only the two and half first lines of the first sentence would be acceptable for all. The last part of the first sentence would not be acceptable for a number of delegations. Consensus ended where the word "visually impaired" came. He asked whether it would be possible, on the basis of that statement, to consider that for the final conclusions only, the first part of that sentence would be taken.

244. The Delegation of Pakistan sought clarification why in the spirit of consensus the deletion was accepted. It did not understand the logic that if more Member States were wishing to retain the sentence, then it was decided to delete it.

245. The Chairman explained that the Committee was not counting votes. If there was a blocking from one corner of the house concerning an element, that element could not be there. There was no consensus. So, it meant that every element should be decided by consensus. The later part of the first sentence had been blocked by objections. As regards the phrase which read: "This should include analysis of limitations and exceptions, including their application to the international exchange of materials in accessible format," the Delegation of France on behalf of the European Community and its Member States had proposed to delete the latter part of that sentence, after the comma, that was to say "including their application to the international exchange of materials in accessible format."

246. The Delegation of Brazil agreed with the paragraph as proposed by the Chairman. It also noted that a sort of balance and compromise had to be reached when deleting some elements. The Asian and African Groups insisted on having the first element "discussion at the national level" included in the first part. An important element in this second part "including their application to the international exchange of materials in accessible format,"

had been considered for deletion despite the fact that it had to do with a recurrent issue during discussions of the Committee on limitations and exceptions for import and export.

247. The Delegation of Algeria said that the Chairman's position was appropriate. Some aspects of the proposal had been removed and that would actually lead to stumbling blocks. It favored to maintain the text as it stood.

248. The Chairman noted that there was an agreement as far as the middle sentence "this should include analysis on limitations and exceptions," but then the second element was not approved by all although supported by many delegations. There were some difficulties in keeping the sentence meaningful.

249. The Delegation of Japan referred to the sentence which began with "This should include analysis of limitations and exceptions, including their application to the international exchange of materials in accessible format." It did not remember that any discussions concerning that issue had taken place. It had been mentioned by one delegation and it could be too premature to add the phrase that start with "including their application to the international exchange of materials in accessible format." It supported its deletion and agreed with the Delegation of France.

250. The Chairman noted that for the third sentence "This should also include the possible establishment of a stakeholders platform at WIPO in order to facilitate arrangements to secure access for disabled persons to protected works" there were two proposals from the Delegation of France to replace the word "platform" with "mechanism" and the proposal of the Delegation of Algeria to delete the words "to facilitate arrangements." Then the sentence would read as follows: "This should also include the possible establishment of a stakeholders' mechanism at WIPO in order to secure access to disabled persons to protected works." He noted that those amendments to this sentence were acceptable to the Committee.

251. The Delegation of Egypt was not sure about the use of the word "mechanism." It wondered what it entailed. In order not to have any confusion on the use of the word "mechanism", it proposed the word "stakeholders' meeting" or a "stakeholders' encounter" but not a "stakeholders' mechanism."

252. The Chairman asked the Delegation of France to clarify the reason to change the word "platform" to the word "mechanism."

253. The Delegation of France said that the word "mechanism" was a more technical term than "platform." It was based on the proposal put forward in the morning session by the Delegation of the United States of America. It did not agree with the Delegation of Egypt to replace "platform" by "meeting" as that term was quite weak. However, it was flexible to keep the word "platform" instead. As the Delegation of Algeria had proposed to remove "to facilitate arrangements," the sentence would read "in order to secure access to disabled persons to protected works." That changed significantly the sentence, and if "to facilitate arrangements" was removed, then the Delegation would prefer to replace the verb "secure" by the verb "facilitate" and the sentence would read: "in order to facilitate access to disabled persons to protected works."

254. The Chairman noted that the words "to facilitate arrangements" evidently had an element that different delegations might consider necessary.

255. The Delegation of Brazil said that the phrase that began with “This should also include the possible establishment of a stakeholders’ platform/mechanism” made sense in the context of the Chair’s original paragraph. However, if it was decided to shorten the paragraph, the sentence would not make sense.

256. The Chairman asked the Committee to consider the fourth sentence “The SCCR took note of the paper presented by the World Blind Union and many delegations expressed interest in further analyzing it.” That followed a proposal made by the Delegation of Brazil and there was a proposal to delete it.

257. The Delegation of the United States of America clarified that in very informal discussions outside the room it had talked about the concept of a mechanism as a word preferable for being a very neutral term. After due consideration, it was quite comfortable using the word “platform”.

258. The Chairman concluded that sentence number three was maintained and the word “platform” could be kept. The fourth sentence in the paragraph, which was based on the proposal by the Delegation of Brazil, had been proposed for deletion by the European Community and its member States. There was no consensus on that sentence. The full paragraph would read “The Committee acknowledged the special needs of visually-impaired persons and stressed the importance of dealing without delay and with appropriate deliberations with those needs of the blind and visually-impaired. This should include analysis of limitations and exceptions. This should also include the possible establishment of a stakeholders’ platform at WIPO in order to facilitate/secure access for disabled persons to protected works.”

259. The Delegation of Pakistan requested a five-minute break so as to consult with the Asian group.

260. The Delegation of Brazil asked what the Chairman’s ruling was with regard to the last sentence on the WBU’s proposal.

261. The Chairman clarified that there was no ruling because that sentence had been proposed and taken along in the Chair’s revised proposal of conclusions submitted to the whole room. But it had been proposed to be deleted by the European Community and its member States. So, there was no consensus on that text.

262. The Chairman warned that the time left for the session of the SCCR was getting short and suggested to proceed with the adoption of all the other elements that provisionally had been adopted, so some time would be available for the visually-impaired persons business.

263. The Delegation of United States of America proposed a clarifying amendment to the paragraph that began “In order to further complement” in the second sentence. It suggested adding after the word “include” the words “limitations and exceptions relating to.” It would read “The areas covered by the questionnaire should include limitations and exceptions relating to” and then it would continue straight through to the phrase beginning “As well as” and then the words “the implication of” would be deleted. It would provide a crisp accurate description.

264. The Chairman noted that that sentence, in objective terms, probably would be better.

265. The Delegation of Pakistan made a minor amendment in one of the paragraphs regarding the protection of audiovisual performances. The second paragraph, third line, that read “the audiovisual performances on the national level and to collect information and proposals,” should include the word “possible”. Therefore, it would read “collect information and possible proposals on outstanding issues.”

266. The Chairman noted that that proposal was acceptable for all. He proceeded to the adoption of all other paragraphs, with the two previous amendments. He noted that the rest, except paragraph 6, was adopted as a whole. As to paragraph 6, he asked whether any delegation was able to withdraw any of the proposals made concerning deletions, in particular the Delegation of France, because some small other things had been taken along. The words “without delay,” “the national and international” and “in order to facilitate and/or ensure access for disabled persons” had been accepted.

267. The Delegation of France said that few minutes of informal consultations would be useful. For the sake of compromise, it could propose keeping in the first sentence the proposal by the Delegation of Pakistan, which was “including discussions at the national and international level on possible ways and means facilitating and enhancing access to protected works.” On the other hand, in the second sentence, it maintained the wish to delete the end of the sentence from “including their application” and so on. On the third sentence, following an Algerian proposal, it proposed to delete “to facilitate arrangements,” and suggested replacing “facilitate” by “secure.” It could also accept to keep the sentence as it was in the text before the amendments were made. On the last sentence, it proposed a new drafting that would read “A number of delegations referred to a paper presented by the WBU and expressed interest in further analyzing it.”

268. The Delegation of Algeria, on behalf of the African Group, asked for some minutes of informal consultations so as to support the amendments of the French Delegation.

269. The Chairman read the paragraph as it would stand and then proposed to proceed to adopt it. He asked to the Delegation of France to clarify the two versions of the third line from the bottom.

270. The Delegation of France said that there were two possibilities regarding that phrase. First, to keep the text proposed by the Chair and the wording that the European Community and its member States preferred was “in order to facilitate arrangements to secure access for disabled persons to protected works.” Second, if the Delegation of Algeria preferred to keep the amendment proposed, then it would propose to replace the verb “to secure” by “to facilitate.”

271. The Delegation of Algeria agreed to keep the first option that would read “in order to facilitate arrangements to secure access for disabled persons to protected works.”

272. The Chairman thanked all for their efforts, read the paragraph and noted that the Committee adopted it. He then noted that the Standing Committee unanimously adopted the following Conclusions:

CONCLUSIONS OF THE SCCR

LIMITATIONS AND EXCEPTIONS

The Committee expressed its appreciation for the studies prepared by outstanding experts, and thanked them for their presentations in the preceding informative meeting.

- The study by Professor Sam Ricketson provides an information basis and a detailed analysis of the norms included in the international treaties and conventions regulating limitations and exceptions.
- The studies by Mr. Nic Garnett, Mrs. Judith Sullivan and Professor Kenneth Crews establish an information basis on the availability, scope and nature of limitations and exceptions currently present in selected Member States' national systems, as well as their interaction with contractual practices and digital rights management.

In order to update and complement the studies, governments are invited to submit to the Secretariat any supplementary information regarding their national law before February 1, 2009. The Secretariat will consult with the experts on the necessary updates of their studies.

The Committee noted with approval the forthcoming study on exceptions and limitations for the benefit of educational activities, including distance education and the trans-border aspect thereof, in particular for developing and least developed countries.

The Committee acknowledged the special needs of visually impaired persons and stressed the importance of dealing, without delay and with appropriate deliberation, with those needs of the blind, visually impaired, and other reading-disabled persons, including discussions at the national and international level on possible ways and means facilitating and enhancing access to protected works. This should include analysis of limitations and exceptions. This should also include the possible establishment of a stakeholders' platform at WIPO, in order to facilitate arrangements to secure access for disabled persons to protected works. A number of delegations referred to a paper presented by the World Blind Union (WBU) and expressed interest in further analyzing it.

In order to further complement the information on limitations and exceptions in national systems, the Secretariat will prepare a draft questionnaire which will be submitted for comments to the Member States before the next session of the SCCR. The areas covered by the questionnaire should include limitations and exceptions related to educational activities, activities of libraries and archives, provisions for disabled persons, as well as digital technology in the field of copyright.

After the work in progress has been completed, the SCCR will consider the further steps in this area.

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

PROTECTION OF AUDIOVISUAL PERFORMANCES

The Committee reaffirmed its commitment to work on developing the international protection of performers concerning their audiovisual performances, and stressed the importance of the exchange of information and informal consultations with the aim of finding a way forward.

The Committee encouraged the Secretariat to continue to organize seminars at the regional and national level, in order to allow extensive exchange of information, also for the purpose of developing protection of audiovisual performances on the national level and to collect information and possible proposals on outstanding issues.

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

PROTECTION OF BROADCASTING ORGANIZATIONS

The Committee decided to continue its work on this item in consonance with the mandate of the General Assembly. A number of delegations showed their interest towards the conclusion of a treaty. The Committee reaffirmed that according to the decision of the General Assembly the protection must be established on a signal-based approach, and the convening of a diplomatic conference could be considered only after agreement on objectives, specific scope and object of protection has been achieved.

The Committee took no decision regarding the options presented in the Chair's paper.

The Committee will continue its analysis of the matter and requested the Secretariat to convene an information meeting on the current conditions of the broadcasting environment with special reference to developing countries and least developed countries during the next session of the SCCR.

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

FUTURE WORK

The Committee shall in its forthcoming sessions give priority to, and adequate emphasis on, the outstanding issues of:

- the limitations and exceptions,
- the protection of audiovisual performances, and
- the protection of broadcasting organizations.

NEXT SESSION OF THE SCCR

The next session of the SCCR and the information session will take place in the week of May 25 to 29, 2009.

OTHER MATTERS

273. The Chair observed that no other matters had been announced for discussion.

CLOSING OF THE SESSION

274. After expressing the customary thanks, the Chair closed the session.

[End of Report, Annex I follows]

ANNEX I

World Intellectual Property Organization
SCCR Seventeenth Session
Geneva, November 5 to 7, 2008

DRAFT CONCLUSIONS OF THE SCCR

prepared by the Chair

Limitations and exceptions

The Committee expressed its appreciation for the studies prepared by outstanding experts, and thanked them for their presentations in the preceding informative meeting.

- The study by Professor Sam Ricketson provides an information basis and a comprehensive analysis of the norms included in the international treaties and conventions regulating limitations and exceptions.
- The studies by Mr. Nic Garnett, Mrs. Judith Sullivan and Professor Kenneth Crews establish an information basis on the availability, scope and nature of limitations and exceptions currently present in Member States' national systems, as well as their interaction with contractual practices and digital rights management.

In order to update and complement the studies, governments are invited to submit to the Secretariat any supplementary information regarding their national law before February 1, 2009. The Secretariat will consult with the experts on the necessary updates of their studies.

The Committee stressed the importance of the forthcoming study on exceptions and limitations for the benefit of educational activities, including distance education and the trans-border aspect thereof, and that it should include developing and least developed countries.

The Committee acknowledged the special needs of visually impaired persons and stressed the importance of dealing with, without undue delay, those needs of the blind, visually impaired, and other disabled persons. This should include both analysis of limitations and exceptions and the possible establishment of a stakeholders' platform at WIPO, through which technological, contractual and other arrangements could be facilitated to secure access for the disabled persons to protected works.

In order to further complement the information on limitations and exceptions in national systems, the Secretariat will prepare a questionnaire a draft of which will be submitted for comments to the Member States before the next session of the SCCR.

After the work in progress has been completed, the SCCR will consider the further steps in this area.

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

Protection of audiovisual performances

The delegations who took the floor expressed their commitment to work on developing the international protection of performers concerning their audiovisual performances. Many delegations stressed the importance of the exchange of information with the aim of finding a way forward.

The Committee encouraged the Secretariat to continue to organize seminars at the regional and national level, in order to allow extensive exchange of information, also for the purpose of developing protection of audiovisual performances on the national level.

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

Protection of broadcasting organizations

All delegations who took the floor expressed their support for continuing the work on this item in consonance with the mandate of the General Assembly, and delegations showed their interest towards the conclusion of a treaty. All delegations stressed that according to the decision of the General Assembly the protection must be established on a signal-based approach, and a diplomatic conference could be convened only after agreement on objectives, specific scope and objective of protection has been achieved.

Most of the delegations which referred to the informal paper prepared by the Chair did not want to reject any option concerning the way forward, while some preference to option A in the Chair's paper was expressed.

The Committee will continue its analysis of the matter and requested the Secretariat to convene an information meeting on the current conditions of the broadcasting environment in connection with the next session of the SCCR.

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

Future Work

The Committee shall in its forthcoming sessions give priority to the outstanding issues of

- the protection of audiovisual performances,
- the protection of broadcasting organizations, and
- the work in progress on limitations and exceptions.

Next session of the SCCR

The next session of the SCCR and the information session will take place in the week of May 25 to 29, 2009.

[End of Annex I, Annex II follows]

ANNEX II

World Intellectual Property Organization
SCCR Seventeenth Session
Geneva, November 5 to 7, 2008

DRAFT CONCLUSIONS OF THE SCCR

prepared by the Chair

Limitations and exceptions

The Committee expressed its appreciation for the studies prepared by outstanding experts, and thanked them for their presentations in the preceding informative meeting.

- The study by Professor Sam Ricketson provides an information basis and a comprehensive analysis of the norms included in the international treaties and conventions regulating limitations and exceptions.
- The studies by Mr. Nic Garnett, Mrs. Judith Sullivan and Professor Kenneth Crews establish an information basis on the availability, scope and nature of limitations and exceptions currently present in Member States' national systems, as well as their interaction with contractual practices and digital rights management.

In order to update and complement the studies, governments are invited to submit to the Secretariat any supplementary information regarding their national law before February 1, 2009. The Secretariat will consult with the experts on the necessary updates of their studies.

The Committee noted with approval the forthcoming study on exceptions and limitations for the benefit of educational activities, including distance education and the trans-border aspect thereof, in particular for developing and least developed countries.

The Committee acknowledged the special needs of visually impaired persons and stressed the importance of dealing, expeditiously and with appropriate deliberation, with those needs of the blind, visually impaired, and other reading-disabled persons, including discussions at the national level on possible ways and means facilitating and enhancing access to protection works. This should include analysis of limitations and exceptions, including their application to the international exchange of materials in accessible formats. This should also include the possible establishment of a stakeholders' platform at WIPO, in order to facilitate arrangements to secure access for disabled persons to protected works. The SCCR took note of the paper presented by the WBU and many delegations expressed interest in further analysing it.

In order to further complement the information on limitations and exceptions in national systems, the Secretariat will prepare a draft questionnaire which will be submitted for comments to the Member States before the next session of the SCCR. The areas covered by

the questionnaire should include educational activities, activities of libraries and archives, provisions for disabled persons, as well as the implications of digital technology in the field of copyright.

After the work in progress has been completed, the SCCR will consider the further steps in this area.

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

Protection of audiovisual performances

The Committee reaffirmed its commitment to work on developing the international protection of performers concerning their audiovisual performances, *and* stressed the importance of the exchange of information and informal consultations with the aim of finding a way forward.

The Committee encouraged the Secretariat to continue to organize seminars at the regional and national level, in order to allow extensive exchange of information, also for the purpose of developing protection of audiovisual performances on the national level and to collect information and proposals.

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

Protection of broadcasting organizations

The Committee decided to continue its work on this item in consonance with the mandate of the General Assembly. A number of delegations showed their interest towards the conclusion of a treaty. *The Committee reaffirmed* that according to the decision of the General Assembly the protection must be established on a signal-based approach, and the convening of a diplomatic conference could be considered only after agreement on objectives, specific scope and objective of protection has been achieved.

The Committee took no decision regarding the options presented in the Chair's paper.

The Committee will continue its analysis of the matter and requested the Secretariat to convene an information meeting on the current conditions on the broadcasting environment in connection with the next session of the SCCR.

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

Future Work

The Committee shall in its forthcoming sessions give priority to the outstanding issues of

- the protection of audiovisual performances,
- the protection of broadcasting organizations, and
- the work in progress on limitations and exceptions.

Next session of the SCCR

The next session of the SCCR and the information session will take place in the week of May 25 to 29, 2009.

[End of Annex II, Annex III follows]

ANNEXE III/ANNEX III

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

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(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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Sangeetaaz TAYOB, Researcher, 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.

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Association littéraire et artistique internationale (ALAI)/International Literary and Artistic Association (ALAI)
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Union internationale des éditeurs (UIE)/International Publishers Association (IPA)

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Union mondiale des aveugles/World Blind Union (WBU)

Christopher FRIEND, Chair, WBU Copyright and Right to Read Working Group, Royal
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