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WIPO

SCCR/18/8
ORIGINAL: English/French/Spanish
DATE: October 1, 2009

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

Eighteenth Session
Geneva, May 25 to 29, 2009

INTERVENTIONS BY NON-GOVERNMENTAL ORGANIZATIONS

Document prepared by the Secretariat

1. During the Eighteenth Session of the Standing Committee it turned out not to be possible for the non-governmental organizations to state their views regarding Agenda items 6: Protection of audiovisual performances, and 7: Protection of broadcasting organizations. At the proposal of the Chair, the Committee decided, in order to allow the non-governmental organizations to express their positions, that one single organization could collect all non-governmental organizations' position papers on those Agenda items and other issues. Those papers should be no more than 3 pages and would be compiled by the Secretariat and presented to all delegations at a later stage. The Secretariat has received the position papers that are reproduced in the Annex to this document.

[Annex follows]

ANNEX

ASSOCIATION OF COMMERCIAL TELEVISION IN EUROPE (ACT)

Delegates attending the 18th session of the SCCR who took away copies of ACT's Factbook 2008 will get from that publication some sense of the diversity of provision and platforms which the 28 member companies of ACT offer across their more than 400 channels. Delegates might also like to read the thoughtful introduction "What is television for?" by Nicolas de Tavernost, Chairman of the Executive Management Board of M6, and President of ACT from 2003 until June 2009. It is no surprise that De Tavernost believes that television has a uniquely valuable role to play despite the rapid evolution of the media environment to encompass new forms of networked interaction such as Facebook and YouTube. Others, like Tim Berners-Lee[1], believe that the Internet is becoming the dominant mode and that it will make mass communication obsolete. Either way, it is clear that we are now in a world which is dramatically different from that which confronted WIPO delegates at the start of our discussions on a Treaty to update the rights of broadcasters. Today, broadcasters are increasingly choosing to distribute their content across a wide range of platforms to meet the expectations of the consumer.

The debate about the role of television is an eminently contemporary debate, but is it a debate that is purely parochial?

One might think so when one hears the insistence from some delegates that any discussion about updating the rights of broadcasters should be restricted to traditional broadcasting and that consideration of issues relating to the Internet is premature. What everyone surely knows is that the central defining characteristic of (let us call it) the information revolution is that it is pervasive, transnational. It would be an institutional failure on a grand scale if an organization whose name proclaims its global mission were unable to address and find solutions for such problems.

The ten years or more that the Standing Committee has had broadcasters' rights under consideration might indicate that there are substantive issues of deep complexity; on the other hand, it might indicate the vulnerability of the Standing Committee's processes. But what is quite undeniable is that the framework remains the same for broadcasters, whereas it had earlier been modernized for other rightsholders, leading to a clearly unbalanced legal *status quo*.

It is tempting to say of the consensus-based multilateral approach which is the guiding light of the Standing Committee's process that it is the worst possible process apart from all the other processes that might be adopted. This should not be understood as being in any sense an attack on the Secretariat. Quite to the contrary. The Secretariat and the new Director-General have shown themselves fully alive to their responsibilities to Members. But the scope of the powers of the Secretariat are properly quite limited; if the train is moving, then other traffic can be cleared from the network.

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[1] "The concept of a [TV] channel will soon be history ... the future of video on the web will allow random access to everything that has ever been broadcast" Quoted in an article by Andy Walker, Ariel magazine (14.07)

The blockage is not only in relation to broadcasters' rights. It extends to audiovisual performers' rights, an issue which has been outstanding and unresolved even longer than the broadcasters' issue.

Much more recently, the Standing Committee has taken up the question of exceptions and limitations, particularly in relation to the visually impaired. There are signs that this subject too may well polarize opinions.

If the outlook seems bleak, it may be realistic to have low expectations. After all, the Doha round has been going since 2001, and the world is in the middle of a major recession. From that perspective, the willingness of the Standing Committee to "continue its work on the protection of broadcasting organizations" can be read as encouraging.

However, this work cannot continue indefinitely. And as time goes by, the challenges to and reinventions of the conventional broadcaster's business model will only increase. The study which is to be commissioned by the Secretariat must not only provide an opportunity to document the positive role of broadcasters in less developed countries in building democratic capacity and a sense of national identity but must also demonstrate, for once and for all, that broadcasters' investment in content is an activity deserving of a modernized legal protection at the international level.

Any attempt to use this study as an excuse for yet more delay must, after all this time, be inadmissible.

COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA) ON THE PROTECTION OF BROADCASTING

Thank you, Mr. Chairman, for an opportunity to be heard in this important debate. Mr. Chairman, CCIA has been active in the discussions related to the Broadcasting treaty for many years now.

In all that time, we have repeatedly asked two simple questions of the advocates of a treaty:

1. What misuse of broadcasts cannot be resolved through enforcement of the rights in the underlying programmes, and which would therefore require additional protection of signals at the international level?

2. Why are provisions designed to protect signals, such as one finds in the Brussels Satellite Convention, insufficient? Why is a regime of rights, the only method of protection acceptable to broadcasters?

With respect to the first question, Mr. Chairman, we've heard for years in this chamber from broadcasters of rampant piracy of broadcasts – however, the examples given relate to the use of fixations of programmes that are the object of broadcasts, not the broadcast signals themselves. Famous examples, such as the iCrave TV case, were resolved expeditiously by enforcement of the copyright in the programmes being used by the iCrave service.

With respect to the second question, here the answers are either unpersuasive (such as "we wish to enforce our own rights, instead of those of others" or "why should everyone else get rights and not us?") or non-existent.

We understand that some may have concerns related to broadcasts of live sporting events. If this needs discussion, that would be a very different thing from what we have heard to date, though we note that we have yet to hear a clamour for international protection of this kind from those immediately concerned.

Mr. Chairman, finally, aside from the lack of any reasonable justification in fact for any rights at all, let alone broad new rights, we have detected no change in the political landscape on this issue. There is no consensus – or anything close to a consensus, on the object of protection, scope of protection, or even who the beneficiaries are to be. In this connection we wish to draw the attention of this house, Mr. Chairman, to the Joint Statement of various sectors of industry, NGOs, and rightsholders that was prepared for this session of the SCCR.

Mr. Chairman, someday there may actually be a real problem that cannot be solved by the use of present legal protections. Someday is not today, it is probably not tomorrow, and it is very likely not even next year or the year after.

We beseech this August chamber, Mr. Chairman, to leave this subject for a future time when it is clear there is a problem to solve, an understanding of what the problem is – and the political will exists to solve it.

Thank you Mr. Chairman once again for your kind indulgence.

COPYRIGHT RESEARCH AND INFORMATION CENTER (CRIC) ON THE PROTECTION OF BROACASTING ORGANIZATIONS

Thank you, Chairman.

First of all, congratulations on your election of the chair and two vice chairs.

On this opportunity, I would like to express my gratitude to the Secretariat of WIPO for organizing the information meeting for the protection of broadcasters yesterday. That was very useful and helpful for us, and at the same time it was a very good step to further develop our discussions towards the Diplomatic Conference.

That meeting clearly showed us how important broadcasting is in our society throughout the world. We could reconfirm that the broadcasting system is the basic social communication and information medium and its role is most important in developing, and least developed countries.

As we all know, the number of the Internet users is rapidly growing, and as it is, the Internet is very important in our present day society. Without the Internet, for instance, we can hardly book a seat on airline from Genève to our respective countries. However, the number of people who can use this system is only 20% of the whole population of the world. Digital divide is widening, not narrowing. In this environment, people need broadcasting as a convenient and essential tool for the access to knowledge and information, and to enjoy entertainment programs, sports news, etc.

Yes, the broadcasting system is no doubt contributing to the public access to knowledge, information, and works, and so on. But recent digital technology tremendously infringes upon broadcast signals every day. Even though the Internet is a very useful tool of communication, it tremendously generates rampant piracy of broadcasting day after day. If the member states fail to establish a Broadcasters' treaty promptly, ever rising piracy by digital technology on website shall cause great damages to broadcasters, and the broadcasters' contribution to social communication system shall decrease enormously. The end result is the loss of a convenient tool for the public access by the people of the world.

Speaking of radio broadcasting, it is one of the most convenient information tools for visually impaired persons without doubt. In the meantime, digital tools are also important for those people to gain access to various works. To ensure this aspect of digital usefulness, we must secure the balance between the protection of rights owners and the reasonable limitations and exceptions for the ease of access to works by visually impaired persons in those digital structures. To do that, first of all we need to stop piracy on the web site. (But this is a quite long way to go.) To be a realist, we should keep intact broadcasting, the convenient communication system. That surely preserves the multiple public accessibility to the works. I believe the establishment of the broadcasters' treaty is the basic element for promoting public access.

Thank you very much.

Actors, Interpreting Artists Committee (CSAI)

Actors, dancers and other audiovisual performers represented by the CSAI – the international organization which represents various bodies managing the rights of audiovisual performers in Spain and Latin America – would like to thank the WIPO Secretariat for its work and in particular for its firm commitment to protecting audiovisual performances.

This renewed interest is the result of the regional and subregional seminars which WIPO has been organizing on this issue in recent years across all continents. These events have inspired a debate which has always inevitably concluded in the pressing need to establish adequate international protection for audiovisual performances, especially in view of the new forms of exploitation which have emerged in recent years.

This need is demonstrated more acutely with regard to the business models which have existed for decades, since many national laws, based on the international policy framework, provide no protection at all for audiovisual performances even in relation to acts of exploitation which are today regarded as "traditional".

It is therefore urgent that an international treaty or instrument is developed which guarantees performers fair and equitable payment or remuneration for all those uses or acts of exploitation which are based on the audiovisual fixation of their performances, therefore establishing an internationally harmonized basis with regard to both the acts of exploitation which have existed for decades and with regard to all new uses and forms of exploitation.

The CSAI also considers it essential that we completely stamp out any discrimination in the protection afforded, or to be afforded, to audiovisual performances compared to other performances incorporated in a phonogram, which incidentally have enjoyed international protection for years. The strong and genuine determination and desire to update the system of rights of performers must be translated into a firm commitment to provide international protection which guarantees that performers share in the benefits arising from the exploitation of their performances incorporated in an audiovisual fixation, as has been the case for years with regard to aural fixations and phonograms.

A regulation in this regard, providing minimums at least, universally accepted by WIPO Member States, would provide an incentive for legislation that still fails to provide proper protection for audiovisual performances and would also serve to strengthen and consolidate the recognized intellectual property rights of audiovisual performers in those States in which the legislation and everyday practice have introduced such rights.

In this regard, the 19 articles of the provisional agreement arising from the Diplomatic Conference held in 2000 constitute a solid basis for the future negotiation of a treaty for the international protection of audiovisual performances by providing at least a minimum on which national laws can continue to build upon.

Finally, the CSAI reiterates its ongoing offer of information and experience and any WIPO delegation may contact the CSAI or any of its members for information concerning the community of actors and other audiovisual performers in Spain and Latin America.

CIVIL SOCIETY COALITION (CSC)
COMMENTS BY THE CIVIL SOCIETY COALITION (CSC)

My name is Pablo Lecuona and I am the Director and co-founder of Tiflolibros, the library for the blind in Argentina.

I took part in the eighteenth session of the SCCR as a member of the Civil Society Coalition (CSC). I would like to make the following comments on the future work of the SCCR at the conclusion of the eighteenth session.

We came to the eighteenth session of the SCCR hoping to solve a concrete and pressing problem for the visually impaired: access to reading material and information.

A total of 90 per cent of the visually impaired and people with other reading disabilities live in developing countries where resources for meeting our needs are very limited.

Nowadays, the problem of access to reading material for people with a disability is a global problem. In the more developed countries, only five per cent of the total works published are accessible and available and in developing countries the figures are alarmingly lower.

Modern technological developments can improve this situation, since the production of works accessible in Braille or in audio and electronic format is becoming more straightforward and the technical possibilities for the exchange and circulation of materials between various countries allows the limited resources available to be optimized.

However, the legal context is preventing progress from being made in solving this problem. Only one in every five countries in the world has incorporated in its copyright laws exceptions to copyright for books for the blind and people with other reading disabilities. But this is not the only problem. Those countries which do have exceptions and which produce books for persons with disabilities are unable to exchange materials and send works to other countries, even where these other countries also have exceptions.

The practical examples and their implications are clear. Spain has a good national exception and a collection of 103,000 accessible books which could easily be dispatched to any country in Latin America in audio format or for printing in Braille. Nicaragua, one of the poorest countries in Latin America, has also included a national exception in its copyright law. However, it is not possible to export books from Spain to Nicaragua. Books for the blind in Nicaragua are therefore produced from a small national production center, financed through Spanish cooperation, which produces and makes available to the Nicaraguan blind only 20 titles each year.

In Quebec, Canada, there is a large library of books in French. However, due to the same limitations concerning the cross-border circulation of materials, its books cannot be sent to France or to francophone countries in the developing world.

As a result, millions of people with a disability are unable to access books which are already accessible and available in their language, simply because they find themselves in a different country to the one in which these materials are produced.

The paradox of this situation is that it is then cooperation agencies, civil society associations and companies with social responsibility in developed countries which often invest in making books available in developing countries.

The examples given allow us to determine clearly how an international solution to this problem would have the effect of multiplying access to information for persons with reading disabilities and optimizing the resources contributed by these developing countries.

And this would be achieved without affecting the economic interests of authors and publishers, since it is a question of making reading material available to millions of people who do not have access today, not only because they are affected by a disability but also because of the general lack of economic resources, which is actually a result of the lack of access to knowledge and which means that they do not purchase books.

As a result of all this, we are keen to see progress made in achieving an international treaty which establishes a minimum basis for exceptions and limitations to copyright and related rights, to be adopted by the various national legislations, and which establishes a clear framework for the cross-border circulation of materials.

Today, WIPO is presented with a great opportunity to open up the world of reading to millions of people and therefore contribute to their educational, vocational and social development. We believe that it is urgent and necessary to make progress on the proposed treaty presented by Brazil, Ecuador and Paraguay, drawn up in conjunction with the World Blind Union. It is essential that progress is made in this practical task so that this treaty can improve access to reading material, establish a clear framework which allows the optimization of resources and in turn provide the necessary guarantees so that the interests of copyright owners are not affected.

Thank you.

Pablo Lecuona
Tiflolibros Argentina
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DIGITAL MEDIA ASSOCIATION (DiMA)

The Digital Media Association (DiMA) thanks the Committee and the Chair for this opportunity to briefly present its views on the Proposed Treaty on the Protection of Broadcasting Organizations. DiMA members represent a broad portion of the Internet-based media and information industries. DiMA member companies provide Internet-based media to many international markets.

DiMA is ready, willing and able to assist the Committee in its efforts. It seems clear however, that without empirical data regarding the problem being addressed it will continue to be difficult to achieve consensus over a broad range of stakeholders that is necessary to support such a treaty. Specifically, we recommend that the Committee seek empirical evidence in support of the concerns, goals and proposed remedies of the treaty, such as: the true amount and cost of any alleged broadcast theft, and the true cost of implementing the remedies considered as part of the proposed treaty. In addition, the Committee should consider – and seek independent assessment of – the wider-reaching effects of any proposed treaty terms, including but not limited to: whether creating new intellectual property rights would inadvertently impose liability for infringing the right on innocent third parties such as individuals, internet service providers and intermediaries, device manufacturers, and software developers, and also whether imposing technological protection measures might inadvertently lead to the government mandated technology or anticompetitive behavior.

To the extent such an inquiry proves that a treaty is necessary, the treaty should not manufacture new rights, but instead be limited to intentional theft or misappropriation of original signals, and do so regardless of the medium through which they are transmitted. To proceed without resolving the concerns noted above could inadvertently burden innovation and the development of various new forms of communications and broadcasts.

Any protection that is deemed necessary and which would be provided to any broadcasting entity that provides any type of transmission of programming to the public should protect all forms of program transmissions – including by webcasting, as well as through traditional terrestrial broadcast, cable and satellite broadcasting.

Webcasting is a mainstream communications medium at this point, bringing local art, information and culture to a global audience. In many respects, webcasting not only supplements – but indeed eclipses – the provision of information and media by more traditional broadcasting technologies, such as terrestrial broadcast, cable and satellite television.

In the US and throughout the world, many radio stations are internet only webcasting stations. The majority of traditional terrestrial broadcasters in the US have added Internet-based webcasting to their businesses. Many have moved certain programs to Internet-only webcasts. The line between traditional broadcast and webcasting is virtually indistinguishable, apart form the medium over which the programming is delivered. As many speakers who made presentations during the lengthy consideration of this treaty topic have noted, webcast programming is "broadcasting" – through a different pipe. Companies such as Microsoft, Apple, RealNetworks, and others spend tens of millions of dollars and euros annually to expand their Internet webcast programming and businesses. The vast and ever-increasing reliance on webcasting as a conduit for entertainment, culture and important information, along with the enormous ongoing investment being made in the medium, merit the same measure of protection that would be considered for any other broadcasting method.

A failure to protect Internet originated webcasts while providing a new protection only to traditional forms of broadcasting will distort the competitive media marketplace in unfair and unjustifiable ways. If the Committee is to consider a treaty that would give traditional broadcasters a right to prevent others from retransmitting their programming by unauthorized webcasts, it would seem more than a bit incongruous if such a treaty prohibited unauthorized webcasts, but did not protect authorized webcasts, themselves.

It is widely understood that the impetus for this treaty stemmed from the perceived need to protect regional programming (initially sports programming) against piracy over the Internet. Yet the companies that first licensed the webcasting of sports programs were not traditional broadcasters – they were Internet-only webcasters. If the treaty protects only traditional broadcasters (many of whom who engage in simulcasting over the Internet), and not original Internet webcast companies, it would create an anticompetitive online marketplace whereby networks could license their content online only to broadcasters who have rights under the treaty to protect that programming, and specifically exclude Internet-based webcasters, who would be denied such rights. Any WIPO treaty that is truly aimed at being neutral should avoid such unfair results.

Additional factors clearly demonstrate the need for any treaty to be technology neutral and to protect webcasting in the same way it might protect any other type of broadcasting, such as the fact that webcasts are particularly susceptible to international piracy. Webcast signals on the Internet are very easily captured by pirates and retransmitted, over the very same computer networks through which they are initially broadcast, for commercial gain. Webcasters devote significant time, money and technology in attempts to thwart webcast piracy, but as the continued discussion of this treaty itself makes clear, technological self-help alone is not sufficient. Legal protection is also needed and deserved. Webcasters will have little incentive to invest further in legitimate businesses that pay royalties to creators, performers, producers and publishers if they lack legal protections against theft and misuse of their signals.

It would be unfortunate if, while decrying Internet piracy, WIPO fails to take fundamental steps necessary to support legitimate webcasting alternatives. Well over a decade ago, WIPO members recognized the importance of the "Digital Agenda." Any treaties that ignore the impact of digital technology are imperiled by their own irrelevance. A forward-looking treaty that will stand the test of time must take into account technological developments and all modern forms of program transmission.

Any treaty and all of its provisions should obligate parties to provide anti-piracy protections to webcasters in the same manner as they would be obligated to provide them to any other form of broadcasting or transmission. Establishing protection for webcasts would place webcasting on equal footing with all other forms of broadcasting, consistent with the accepted principles of WIPO that promote technological neutrality.

DiMA urges that any treaty instrument intended to protect broadcasting now should similarly address the same problems of piracy for Internet webcasting, and grant equivalent rights to all who invest in the creation and dissemination of valuable programming – regardless of what transmission technology they may employ.

We remain at the disposal of the Committee in its continuing efforts.

ELECTRONIC FRONTIER FOUNDATION (EFF)

Mr. Chair and Member States, thank you for the opportunity to present our organization's written comments for your consideration. The Electronic Frontier Foundation (EFF) is an international civil society non-governmental organization with more than 13,000 members in 57 countries, which is dedicated to the protection of citizens' civil rights, and the creation of balanced intellectual property laws that enable access to knowledge and foster technology innovation. We wish to comment on two matters.

I. Item 7 – Protection of Broadcasting Organizations

EFF is a signatory to the Joint Statement of Certain Civil Society, Private Sector and Rightsholders' Representatives opposing the draft Broadcasting treaty. EFF has analyzed the treaty text in previous briefing papers for SCCR delegates[2]. In light of the discussion in May, we wish to highlight several concerns.

1. The Treaty is not limited to Signal Protection

The draft treaty text in SCCR/15/2 would give broadcasters and cablecasters intellectual property rights over the use of transmissions *after* fixation of signals, rather than providing measures against intentional theft of broadcasters' signals. SCCR/15/2 therefore does not meet the 2006 WIPO General Assembly's mandate that the treaty should take a "signal-based approach." Protection of signals does not require the creation of intellectual property rights. So long as it is not limited to signal protection, the treaty threatens the public's access to

[2] See *http://www.eff.org/files/filenode/broadcasting_treaty/EFF_position_paper_jan_2007.pdf* (on SCCR/15/2); *http://www.eff.org/files/filenode/broadcasting_treaty/EFF_wipo_briefing_paper_062007.pdf* (Non-paper of April 2007); Briefing Paper on TPMs and Technology Mandate Laws: *http://www.eff.org/files/filenode/broadcasting_treaty/TPMs-and-Technology-Mandates.pdf*.

knowledge and consumers' existing rights under national copyright law, and communication and future innovation on the Internet.

2. Restricting Currently Lawful Consumer Activity and Access to Knowledge

Consumers can currently timeshift and retransmit lawfully acquired television programming within their home environment under national copyright law. The treaty threatens these rights. Creating a layer of rights that are independent of copyright law allows broadcasters and cablecasters to restrict personal uses within the home that would be lawful under copyright law. In addition, legally-enforced broadcaster technological protection measures (TPMs) are likely to override national copyright exceptions and limitations and restrict access to permissively licensed material and public domain works. This will harm consumers, educators, researchers, libraries, podcasters and ICT companies, all of whom need to access information for legitimate purposes.

Commensurate exceptions and limitations are needed to protect currently lawful activity and the public interest. Article 17 permits, but does not require, signatory countries to create exceptions to the new rights that mirror those in national copyright law for certain classes of copyrighted works. Any treaty should include mandatory exceptions that are equivalent in scope to those in the Rome Convention and TRIPs Agreement, including a non-exhaustive enumerated list of exceptions necessary to facilitate freedom of expression, and the ability to create appropriate new exceptions. While the TRIPs Agreement permits signatories to recognize non-exclusive broadcasting rights, unlike the treaty, it does not condition creation of exceptions to those rights on satisfaction of the three-step text. There is no justification for limiting Member States' powers in relation to the treaty's new rights.

3. Detrimental Impact on Internet Communication and Innovation

Although the treaty does not give rights to webcasters, it extends to Internet retransmissions. Extending the treaty to the Internet is likely to harm user-generated content and endanger future Internet innovation for several reasons. First, it would add complexity to already difficult copyright clearance regimes. Second, the new transmission rights may lead to claims of secondary liability against Internet intermediaries who play a vital role in transmitting information, and manufacturers of technologies that might be used by others to infringe those rights.

The proliferation of user generated content on websites such as YouTube across different countries and cultures reflects the fact that they are essential manifestations of freedom of expression in the online world. These activities have thrived without the new exclusive rights that the treaty would give broadcasters and cablecasters. Granting traditional broadcasters and cablecasters broad rights over Internet retransmissions is likely to harm new forms of citizen broadcasting on the Internet, such as podcasting, while advantaging incumbent broadcasters and cablecasters, at a time when it is not clear what the future of broadcasting will be. This is of great concern to the Internet community. At the Second Special SCCR Session in June 2007, EFF delivered an open letter from over 1500 podcasters from across the world, expressing concern about the impact of the treaty on the future of podcasting.

4. Harm to Competition and Innovation

The treaty is likely to harm competition and innovation in home entertainment technology by allowing broadcasters and cablecasters to control the market for transmission receiving devices.

Article 19 would require legal protection for TPMs on broadcasters' and cablecasters' transmissions over traditional distribution channels and on the Internet. Broadcaster TPMs are enforced through broadcast-receiving devices. While the treaty does not mandate the use of broadcaster/cablecaster TPMs generally, nor particular TPMs, in order to be effective, national implementation may require technology mandate laws where TPMs are used. These laws require manufacturers to design devices to look for and respond to particular TPMs and ban devices that do not from the marketplace. Granting exclusive rights over transmissions of fixed broadcasts with legally-enforced TPMs allows broadcasters and cablecasters to use a particular TPM to control the market for transmission receiving devices such as digital video recorders. The ability to use a TPM to lock content reception to particular devices is well understood in countries where cable television is viewable only on proprietary set top boxes. The treaty would expand this practice to other devices that receive broadcasts, cablecasts and Internet transmissions. This threatens existing technologies and the development of future home networking devices.

5. Absence of Empirical Evidence to Justify a Rights-based Treaty

To the extent that broadcasters are seeking a treaty in order to remove unauthorized television content on the Internet, we note that this can already be done using existing national copyright laws. As demonstrated by the daily requests of television networks to remove unauthorized television content from video hosting websites like YouTube, there is no need for a new treaty to deal with that.

We respectfully urge Member States to consider the impact of a rights-based treaty on consumers, citizen broadcasting on the Internet, and competition and innovation, and not just protection of broadcasters' and cablecasters' investments, in your deliberations.

II. Item 8 – Future Work of the Committee

We would like to suggest two additional work items for the Committee's agenda:

First, orphan and out of print works. The SCCR could commission a study comparing the various governmental and non-governmental approaches being considered in the U.S.A., the European Community, and Canada for access to and use of orphan works and out of print in-copyright works.

Second, Open Access licensing. As a complement to its future work on copyright exceptions and limitations for education, the SCCR could consider the benefits of open access licensing for cross-border digital education and potential obstacles arising from territorial copyright regimes and the absence of harmonized national copyright exceptions and limitations.

Thank you for your consideration.

Gwen Hinze
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Joint statement by:
EUROPEAN NEWSPAPER PUBLISHERS' ASSOCIATION (ENPA)

ENPA – the European Newspaper Publishers' Association – and WAN – the World Association of Newspapers – have carefully noted the concerns expressed by the Visually Impaired communities, by other interest groups and certain Member States to have more open discussion on limitations and exceptions.

However, as rightsholders, we think that first of all the current legislation, which already includes exceptions and limitations at EU and International level, should be carefully examined in order to exploit its full potential. In our views, reopening the discussions on the existing exceptions and limitations is not the best solution. Our internal analysis of this question shows that the problems are more on the technical and financial levels aspects rather than on the legislative aspects.

Secondly, newspaper publishers are currently struggling to remain viable on the market and to fight against news aggregators which steal our content and compete unfairly on the advertising market. ENPA has recently released a public statement on this particular issue
./. (see document in annex).

In this context, we hope that WIPO will carefully evaluate the application of the current legislation before reopening a debate on exceptions and limitations which can have undesirable effects our industry.

Joint statement by
THE INTERNATIONAL FEDERATION OF ACTORS (FIA)
AND THE INTERNATIONAL FEDERATION OF MUSICIANS (FIM)

The world community of performers, as represented by the International Federation of Actors and the International Federation of Musicians, the only two global federations together representing more than half a million professional performers in both developing and developed countries around the world, unmistakably and strongly support a treaty granting performers for the first time at international level a meaningful – and much needed – protection of their audiovisual performances. We hardly need to stress the fact that, if this protection was indeed needed in the last century, it has become vital for them in the digital environment to continue to make a living, as the exploitation of their work is steadily shifting to new media and is made available on demand to global audiences.

We believe that the 19 articles, as provisionally approved at the 2000 Diplomatic Conference, form an acceptable minimum compromise package that would greatly enhance the protection of performers and reward them for their contribution to the success of the entertainment industry.

This industry is not simply a great economic asset for all countries but also a key conveyor of cultural values and a promoter of social cohesion.

We feel there is a growing consensus within the industry that an audiovisual performances treaty is not only necessary but is also within reach.

We wish to thank WIPO for their unreserved support and all Member States that continue to show a genuine commitment to making substantial progress on this important issue. The unanimous will expressed by this Standing Committee is a clear sign that all governments are now determined to offer audiovisual performers a minimum – but meaningful – level of protection.

The regional meetings organised by WIPO are an invaluable resource as they make it possible to further substantiate our claims. Combining an IP approach with an overview of the social status of performers and the contractual practices that they are invariably subject to, as experienced in the Malawi seminar, makes the need for a substantial IP protection of audiovisual performances even more obvious.

Performers continue to rank among the most flexible workforce, in a strong labour-dependent industrial sector. Their employment conditions are extremely casual and precarious and an overwhelming majority of them, not only due to the very bad economic juncture, simply cannot make ends meet. In all countries where they have nothing to bargain for, they live on the verge of poverty and must cumulate odd jobs to sustain themselves and their families.

As the recent debate in Europe about the extension of the term of protection has shown, governments increasingly share the view that performers must be allowed to derive real economic benefits from intellectual property during their lifetime and that it is urgent to find the most appropriate mechanisms to make that possible, including by introducing balancing factors to uphold their often weak bargaining power.

We have been hearing in current WIPO debates much emphasis on equity and fairness. We are confident that these ideals will equally inspire the WIPO Member States and prompt them to extend minimum intellectual property protection to all performers in the immediate future.

We support the suggestion to continue holding capacity building workshops, as they have proven extremely useful to raise awareness about the need of audiovisual performers to be granted IP protection.

We warmly welcome the suggestion to hold informal consultations, with a particular focus on outstanding issues, and we remain at the disposal of all delegations and WIPO to provide expertise and information from the field.

INTERNATIONAL FEDERATION OF ASSOCIATIONS OF FILM DISTRIBUTORS (FIAD)

The International Federation of Associations of Film Distributors (FIAD) brings together organizations of cinematographic works distributors dealing mainly with the broadcasting of these works in cinemas. Firstly, it would like to congratulate the Chair on his election and also congratulate the two newly-elected Vice-Chairs.

At this stage we have not been able to carry out an in-depth examination of the draft treaty on the visually impaired, but this draft and the debates which are taking place in this committee clearly concern a subject that has our attention.

Film showings for the visually impaired are already facilitated by audio description. In fact, rather than special showings, it is a question of allowing the film to be understood during showings aimed at the public at large, thus in far more sociable conditions than was previously the case with showings aimed at a specific audience. Moreover, special subtitles can be displayed for the benefit of people with hearing difficulties.

The introduction of these techniques obviously requires access to material intended for screening in order to be able to add the soundtrack or subtitles. From a practical point of view, the 35 mm film is not suitable for these types of technical operations and cinemas are gradually being equipped with digital projectors. Digital projection meets the ISO standards adopted and facilitates the addition of a suitable soundtrack or subtitles intended for the hearing impaired. Similar techniques are used in television and video broadcasts. I should add that these techniques require the involvement of qualified people who are committed to preserving the integrity of the work and facilitating access to that work by the targeted public.

These examples of developments within the industry show that appropriate solutions are being implemented by the companies responsible for exploiting works. These technical solutions relating to cinematographic works are therefore being implemented gradually and without a doubt more quickly than could be expected of the discussion, negotiation and ratification of a treaty.

Joint statement by
THE INTERNATIONAL FEDERATION OF FILM PRODUCERS ASSOCIATIONS (FIAPF)
THE INTERNATIONAL VIDEO FEDERATION (IVF)

The International Federation of Film Producers Associations (FIAPF) is a trade organization dedicated to the defence and promotion of the legal, economic and creative interests of film and audiovisual producers throughout the world. FIAPF members are 25 national producers' organizations from 23 countries across the globe.

The members of the International Video Federation (IVF) comprise companies, which are involved in all areas of the audiovisual industry (development, production, distribution, etc.) as well as entities dedicated to, and specialized in, the distribution of audiovisual content on physical carriers and/or over digital networks, including the Internet.

FIAPF and the IVF welcome the opportunity to provide comments in response to WIPO SCCR Chairman Jukka Liedes' call at SCCR 18 for written contributions from NGOs.

Protection of Audiovisual Performances

– We note that there appears to be new momentum at WIPO towards addressing the deadlock over the introduction of additional protection for audiovisual performances at the international level. This was evident from the remarks by the Director General of WIPO as well as from interventions from a number of important Member State delegations at SCCR 18.

– We recall that a number of discussions have taken place since the closure of the WIPO Diplomatic Conference of 2000, in Geneva, which led to the Treaty on Protection of Audiovisual Performances being abandoned principally over the issue of disposition/transfer of rights.

– Debates have since taken place at almost every SCCR meeting, in "regional" meetings organized by WIPO, and in a number of bilateral discussions between key stakeholders. However, no breakthrough has been achieved in particular over the difficult issue of disposition/transfer of exclusive rights (leaving aside the issues of national treatment, remuneration and moral rights among others).

– We continue to be open to finding a reasonable solution to this issue that will work for all legal systems and recognize the reality of film-making and distribution. However, there are also questions about whether the consensus on other provisions in the draft Treaty from 2000 is still secure. It is possible particularly in light of changes in existing national laws that delegations may wish to reopen other issues including, for example, distribution of levies, moral rights, and communication to the public.

– Moreover, certain of the debates in respect of the proposed Treaty on Protection of Broadcasting Organizations raise the spectre of introduction of new concepts in the draft Treaty on Protection of Audiovisual Performances that may be problematic for a number of delegations (issues related to exceptions, technical measures, competition policy, etc.). Furthermore, any new treaty on protection of audiovisual performances must not undermine the existing WIPO treaties.

– The audiovisual sector places great importance on legal provisions that clarify the disposition of exclusive rights (by operation of law, presumption of transfer, work made for hire, *cessio legis*, and presumption of legitimation). Such provisions already exist in many national laws and are vital for the functioning of the audiovisual sector to the benefit of all stakeholders (producers, distributors, performers, and viewers). Rights needs to be centralized with producers in order to ensure effective exploitation of new and existing works.

– For independent cinema worldwide, this is not merely an issue of exploiting the finished film. The economics of independent film production are based on

pre-sale of distribution/exploitation rights by distribution channel, media platform, and language versions. Producers need to be able to contract rights with legal certainty to downstream distributors in order to finance the production of the film.

Protection of Broadcasting Organizations

– We note that Member States discussions in WIPO over the protection of broadcasting organizations at the international level have failed to achieve the consensus necessary to move towards a Diplomatic Conference despite years of efforts.

– This has largely been due to a number of influential Member States who seemed to have concerns about the utility of enhancing the legal protection of intellectual property rights for broadcasters. They have been supported in their efforts by certain NGOs that question the importance of intellectual property protection to *inter alia* development. We believe this is a short-sighted view.

– From the outset, we have supported a balanced approach to the legal protection of broadcasting organizations at the international level. Broadcasters (and indeed webcasters) already enjoy a significant level of protection in many countries and at the European level.

– In those countries, this protection has coincided with the development of a strong audiovisual sector. It is also driving the launch of innovative new services which benefit society at large.

– The purpose of the draft Treaty on Protection of Broadcasting Organizations would have been to replicate that success at the international level and in particular lead to similar levels of protection in countries where it is lacking. Thus, it is a number of developing countries, their content sectors and the broader public who have lost out.

– The aim is not to transplant systems of protection. Member States may of course take different paths to achieving that protection in line with national traditions.

– The road to a Diplomatic Conference and the adoption of a balanced treaty was unfortunately blocked. In addition, a number of proposals were put forward which would actually threaten the existing legal protection for copyright and related rights at the international level. This protection is based on a hard-won consensus between WIPO Member States and a wide range of stakeholders. It is driving innovation and creation around the world.

– We support the continuing work of the SCCR to bring a balanced Treaty on Protection of Broadcasting Organizations back on the WIPO agenda.

Future Work of the Standing Committee on Copyright and Related Rights

We believe the future work of the Standing Committee on Copyright and Related Rights should focus on the following items:

– Completing a comprehensive study on exceptions and limitations including as they relate to software programmes.

– Exploring national approaches to providing incentives to service providers to cooperate to combat online piracy.

– Economic studies on the value of protection of intellectual property rights.

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Ibero-Latin-American Federation of Performers (FILAIE)

Further to the request for an opinion from the Ibero-Latin-American Federation of Performers (FILAIE) concerning the eighteenth session of the SCCR, we would like to make the following comments:

I. With regard to the protection of performers for their audiovisual performances, FILAIE maintains the view that we have already expressed sufficiently in previous Committees, but would like to recall the following points:

(a) The recommendation of the Diplomatic Conference of December 20, 1996 should be taken into account, namely that it was urgent that protection be granted to performers in the audiovisual field. Unfortunately, this attempt was unsuccessful and the Diplomatic Conference held in 2000 failed due to disagreement over the transfer of rights to audiovisual producers.

(b) The only international standard is the Rome Convention, Article 7 of which grants protection to performers only with the possibility of preventing the broadcasting, fixation and reproduction of their performance without their consent, etc. Apparently this protection seems to take into account the rights of audiovisual performers but, under Article 19 of this Convention, once a performer has

consented to the incorporation of his performance in a visual or audiovisual fixation, Article 7 shall have no further application. This means that in accordance with the Rome Convention, there is no protection at all.

(c) With regard to the draft treaty on audiovisual performances, following lengthy discussions and after a consensus had been reached on virtually all 19 articles, a stumbling block arose with regard to the second paragraph of Article 12 concerning the transfer of rights from performers to audiovisual producers.

For these reasons, we find ourselves in a situation of non-existent protection. However, protection measures should be adopted as soon as possible given that the works of performers have been disseminated widely on the Internet virtually free of charge and therefore infringing intellectual property rights.

In short, FILAIE is proposing that the work carried out to date be stepped up and that we should take advantage of the intersessional periods so that governments, through their regional groups, can build on their political will to grant the protection that is severely lacking for performers, especially when reservations in respect of the international treaty are possible, as under the Rome Convention.

II. Protection for broadcasters

FILAIE believes that the mandate given by the General Assembly to the Standing Committee on Copyright and Related Rights on this matter should be observed faithfully. We recall that this mandate refers to the protection of broadcasters' signals against piracy and, this being the case, we believe that governments have sufficient provisions to regulate the airwaves. However, FILAIE is not opposed to this protection, as long as the rights of authors and performers in the content broadcast are safeguarded, given that it is very difficult to isolate the signal from the content.

However, we would like to stress that there would be a severe imbalance if international protection were to be granted to broadcasters without prior protection being given to performers for their audiovisual performances. We should not forget that the main holders of copyright and related rights are authors, as the creators, and performers, as the re-creators and inevitable vehicle for the broadcasting of intellectual property. For this reason their protection should be included under this concept.

Joint intervention by:
INTERNATIONAL FEDERATION OF LIBRARY ASSOCIATIONS (IFLA)
ELECTRONIC INFORMATION FOR LIBRARIES (EIFL)

Agenda item 8
Future Work of the Committee

Thank you, Mr. Chairman. I am speaking on behalf of Electronic Information for Libraries and the International Federation of Library Associations.

We would like to thank Member States for the comprehensive discussion and thoughtful contributions on agenda item 5 Exceptions and limitations. The interest expressed by Member States in the broad framework of E&L indicates a willingness to continue discussion about library and educational exceptions.

We would like to offer our suggestions for the Future Work of the Committee with reference to the broad agenda on Exceptions and Limitations as set out in the Conclusions of SCCR/17. We would like to explain briefly why exceptions and limitations for libraries are an international issue and need attention from this Committee. There are three key issues.

1. The growth of the Internet – communication without borders

Online access is now a factor which determines the information "haves" and "have nots" with all the resulting educational, cultural, social and economic consequences.

2 Expansion in licensing of digital resources

The rapid growth of digital resources means that libraries and their end users are acquiring materials under the terms of license agreements. These licenses are an important part of the international marketplace.

However, licenses offered to libraries are mostly undercutting and even reversing the effects of exceptions and limitations that have been carefully added to national copyright laws in order to protect the public interest. Action at international level is critical to ensure a degree of harmonization and certainty about the application of copyright law to licensed works. Licensing agreements should not redefine the rules of copyright.

Furthermore, while technological protection measures enforce the license terms, they interfere with digital preservation and fair access by users to materials, including the provision of accessible copies to reading disabled people.

3. The legal framework is out of step with the digital reality.

Many library activities and services are affected by this changed reality. These include:

1. Digital preservation to preserve the world's memory for future generations;
2. Digitization projects which open up valuable and unique library collections to the world's researchers and scholars on the Internet;
3. Support for distance education and virtual environments that create learning opportunities for people otherwise excluded from traditional education;
4. Provision of material in accessible formats to persons with disabilities; and

5. Resource sharing amongst libraries to meet users' information needs

We earnestly request that the Committee further considers these important issues concerning libraries so that they can continue to provide access to knowledge in the global digital environment in the public interest.

Thank you, Mr. Chairman.

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Joint intervention by:
INTERNATIONAL FEDERATION OF LIBRARY ASSOCIATIONS (IFLA)
ELECTRONIC INFORMATION FOR LIBRARIES (EIFL)
LIBRARY COPYRIGHT ALLIANCE (LCA)

Agenda item 7
Protection of Broadcast Organizations

Thank you, Mr. Chairman. I am speaking on behalf of the International Federation of Library Associations, Electronic Information for Libraries and Library Copyright Alliance.

We remain opposed to the proposal for a broadcast treaty. Any new layer of rights which affects access to content is of concern to librarians because it imposes an additional barrier to access to knowledge, particularly content in the public domain.

If, however, further work is to be done on the proposed treaty, it is essential that it limits itself to its intent i.e. to prohibit *signal* piracy, and does not create new rights for non-creative endeavors. It seems to us to be unreasonable and unjustified that the vehicle for the content should gain protection over the content itself. Should protection be extended to the content, a number of exceptions and limitations are necessary, including for libraries, educational activities and persons with disabilities.

We refer Member States to the Joint Statement of Certain Civil Society, Private Sector and Rightsholders' Representatives for the 17th Session of the SCCR on the table outside the room.

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Joint statement by:
INTERNATIONAL FEDERATION OF THE PHONOGRAPHIC INDUSTRY (IFPI)
INDEPENDENT MUSIC COMPANIES ASSOCIATION (IMPALA)
INTERNATIONAL VIDEO FEDERATION (IVF)

Intervention of IFPI, IMPALA and IVF with respect to future work program July 2009

The undersigned NGOs, representing record and film producers and distributors from countries around the world, urge that the future work program of the SCCR should include examination of developments around the world on the issue of ISP cooperation – i.e., active cooperation by Internet service providers in helping to curb online copyright infringement.

In our view, this is one of the most important developments in copyright today. It is critical for the future of copyright in the digital networked environment, and the ability to control infringement sufficiently to sustain thriving legitimate market offerings. This issue has arisen because ISPs are in a unique position to address online infringement. On a technical level, they have the ability to control the ways in which their networks are used to infringe. Moreover, they have relationships with their subscribers which enable them to contact and communicate with them, as well as to limit any abuse of their services. While many countries have laws providing incentives for ISPs to cooperate in removing infringing content that is hosted on their networks or services, not all do. In addition, these laws were drafted years ago and need updating in various respects. In particular, their language predates the invention of P2P and other new technologies which facilitate the unauthorized distribution of copyright works online and does not effectively address their impact. Yet the unauthorized distribution of copyright works via P2P networks, cyberlockers, streaming/linking sites and usenets has created a major internet piracy problem today. Unauthorized filesharing alone accounts for up to 80% of online infringement and more than 50% of all Internet traffic in many parts of the world. The net result is that artists and creators are not remunerated for their efforts, which is unfair and unsustainable in economic and social terms.

Over the past year and a half, there has been tremendous movement on this issue globally. It is a subject discussed widely in private and cross-industry negotiations, in academic debate and in the press, and is on the agenda for action by governments in many countries.

The common thread in all of these discussions is the recognition that ISPs need to play more of a role if online infringement is to be effectively controlled. The precise solutions under consideration differ in different jurisdictions, but include some form of “graduated response” (involving escalating warnings to infringers and an ultimate deterrent sanction for those who refuse to stop infringing), and/or the use of technical measures such as site blocking and filtering of unauthorized copyright works.

To give some examples of these recent developments:

– Legislation requiring ISP action has been passed or proposed in France, the UK, Korea, Taiwan and New Zealand;

– Government-sponsored negotiations or consultations are taking place in Japan, Australia, Brazil, Denmark, Finland, Japan, Malaysia, Mexico and the Netherlands;

– Court decisions or settlements requiring ISP action have been reached in Argentina, Belgium, Finland and Ireland.

In light of the diverse evolving approaches in different jurisdictions, we believe that an international norm-setting exercise would at this point be premature. But given the importance of the issue, and the rapid pace of developments, any organization with a role in copyright at the international level should be aware of what is happening. We therefore urge that the issue be added to the future work program of the SCCR, as a topic for ongoing attention. We respectfully submit that it would be very helpful for the Secretariat to prepare a summary of developments around the world.

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INTERNATIONAL MUSIC MANAGERS FORUM (IMMF)

Written intervention for WIPO SCCR18 concerning a possible treaty for audio-visual performances, a possible treaty for broadcasting organizations and SCCR future work

The International Music Managers Forum who represent the interests of featured artists in music worldwide, would like to thank the Chair for his generosity in giving the NGO's an opportunity to provide a written intervention concerning SCCR18 discussions on a possible instrument for the Protection of Audio-Visual Performances, a possible instrument for the protection of Broadcasting Organizations and suggestions for future work of the committee.

Protection of Audio-Visual Performances

We were very encouraged by the many delegations who spoke in favour of bridging the gap between the rights of audio-only performers who are protected by the provisions of the WPPT and the rights of audio-visual performers, which as we all know are considerably weaker. This has created a situation where audio-visual performers are regarded as second-class citizens to audio performers which is clearly a notion that is unsustainable.

It was a great disappointment to us all when the diplomatic conference in 2000 failed. We now seem to have an exciting new impetus to finally get this much needed audio-visual treaty agreed. It seems to us that the way forward would be to simply delete article 12 of the basic proposal of 2000, and leave the issue of transfer to national legislation or to contract. The treaty could then be based on the remaining 19 articles that have already received

provisional agreement. We would appeal to the United States delegation and our NGO colleagues in the film and broadcasting industries to revisit their position on the issue of transfer. With a new US administration and renewed enthusiasm for this treaty we believe that a conclusion can be reached. The film, television and broadcasting industries in the US are clearly very economically important and very successful, but the US has to strike a balance between its audio-visual industries and the audio-visual performers that created them. Without audio-visual performers there would be no film or television industries.

We would also like to congratulate the WIPO Director General on his impassioned and very supportive intervention regarding progress concerning an audio-visual treaty at the SCCR18. The IMMF fully supports the Director General in his proposal to move the protection of audio-visual performances forward with a special consultative meeting. WIPO and the SCCR urgently need a new success story and most people participating in WIPO SCCR processes can now see that an audio-visual treaty is achievable. It has been 13 years since this prestigious committee concluded a treaty. Let's put our differences aside and show the world that we can all work together in the interest of fairness and the support of creativity and the creative industries.

Protection of Broadcasting Organisations

We were very impressed with the information presentations on broadcasting delivered to the SCCR on Monday, May 25, 2009. They highlighted in a clear and concise manner how important the broadcasting industries are and how rapidly they are changing. Piracy in broadcasting is clearly a problem as is unauthorized file-sharing in the music industry.

We would very much welcome a signal based treaty based on the Brussels Satellite Convention, as supported by the delegations of the United States, India, South Africa, Mexico, Indonesia and others. With such a signal based treaty there would be no need for another layer of exclusive rights. By drafting a narrow signal protection based instrument, and incorporating updated definitions and stronger enforcement provisions broadcasters would be given the protection they need to protect their programming and transmissions. This would have our full support.

Future Work of the SCCR

As far as future work is concerned we would welcome the SCCR engaging with the most important issue of the day concerning copyright and related rights and that is monetising the anarchy going on with music and film on the Internet. As mentioned in our intervention on limitations and exceptions, with as much as 95% of music downloads being unauthorized the global music industry is experiencing nothing less than market failure. Urgent radical action is needed to bring the ISPs and the Mobile Service Providers in to the value chain for the benefit of all stakeholders, and more importantly consumers.

We would also welcome a review of collective management. There needs to be greater international harmonization and more efficient and accurate cross-border payments. We would also welcome one international identifier system that would accurately and efficiently identify all works and recordings worldwide.

The International Music Manager's Forum represents featured artist music managers and through them the featured artists (performers and creators) themselves. These featured artists are those authors and performers that are the source of over 95% of the economic activity in the global music industry. Featured artist music managers are uniquely placed to comment on music industry issues, as they are the only group of professionals that deal with every aspect of the music industry and the copyright system as it applies to music on a daily basis. Music managers are responsible for every aspect of the artist's career including interfacing and negotiating with phonogram producers, music publishers, making arrangements for touring, sponsorship, merchandising, and ensuring that all the available income streams, including those from collection societies, are properly managed. Managers are generally remunerated on a commission basis (usually in the region of 20% of income actually received by the artist) so income streams affecting the artist also directly affect those of the manager. The International Music Managers Forum comprises 18 Music Managers Forums around the world including Australia, Belgium, Canada, Denmark, Finland, France, Germany, Ireland, Italy, The Netherlands, New Zealand, Norway, Poland, South Africa, Sweden, United Kingdom and United States of America.

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KNOWLEDGE ECOLOGY INTERNATIONAL (KEI)

Knowledge Ecology International (KEI) thanks the WIPO Standing Committee on Copyright and Related Rights (SCCR) and the Chair, Jukka Liedes, for affording KEI the opportunity to present our written comments on the subject of the future work of this Committee.

KEI is pleased that the SCCR will consider the Proposal by Brazil, Ecuador and Paraguay Relating to Limitations and Exceptions: Treaty Proposed by the World Blind Union (WBU), at the nineteenth session of the SCCR.

The SCCR should evaluate the proposal for a treaty for reading disabled persons, with the aim of bringing to the 2010 WIPO General Assembly a proposal for a diplomatic conference in 2011 on this topic.

To assist work on this project, KEI suggests that Member States and the WIPO Secretariat provide more information to the SCCR about the current status of cross-border movement of accessible works that were created under copyright limitations and exceptions regimes, with particular emphasis on the legal mechanisms used and the extent of cross-border sharing of accessible works.

The WIPO SCCR should also pursue its work on the other elements of the limitations and exceptions agenda, including in particular, to examine the topics of limitations and exceptions in the areas of education, distance education, libraries, innovative services and access to out of print or orphaned works.

In this regard, KEI suggests the SCCR consider a future information session on the topic of access to out of print and orphaned works, including sharing of national experiences on this topic, and a discussion of proposals to address the issue of orphaned works through limitations on the remedies for unauthorized uses of works, including through the flexibilities of Article 44.2 of the TRIPS.

KEI also suggests the WIPO SCCR consider two new agenda items. The first new agenda item should be the control of anticompetitive practices. The second agenda item should be the "evidence base and transparency of the copyright system."

For the item, the control of anticompetitive practices, KEI would also suggest the WIPO Secretariat be asked to provide statistics to the SCCR on the concentration of ownership of publishing in the areas of recorded music, and books and software, broken down into relevant submarkets, and to have an information session on the national implementations of Article 40 of the TRIPS.

In the area of the evidence base and transparency of the copyright system, the SCCR should consider the needs of policy makers and stakeholders for more transparency of the economic aspects of the copyright system, in order to facilitate better policy making.

ASSOCIATION NATIONALE DES ORGANISMES COMMERCIAUX DE RADIODIFFUSION DU JAPON (NAB)
NAB-JAPAN DRAFT SPEECH ON BROADCASTING

Thank you, Mr. Chair.

At the last SCCR, majority voice asked for finishing the unfinished, pending issues, which were the protection of broadcasting organizations and that of audiovisual performances. Especially on the protection of broadcasting organizations, SCCR has been asked to agree on objectives, specific scope and object of protection to convene a diplomatic conference.

It is a given that this important agenda is the issue majority of the delegations want progress.

This time, information meeting was held, following the conclusion of SCCR/17, the purpose of which was to analyze the current condition of the broadcasting environment, especially in developing countries and least developed countries.

The meeting was well organized and very informative and I greatly appreciate the WIPO Secretariat for its effort. In developing and least developed countries, unfettered access to information is of the utmost importance for the people. It is an axiom that broadcasting organizations have been trying and playing this vital role of disseminating information. And now, the role of broadcasting organizations has never been greater in this age of globalization and digitization.

But ironically, on the other hand, the very existence of broadcasting organizations is really at stake now because of digitization. As NAB-Japan and our colleagues over the world have been repeatedly saying, broadcast signals are pirated constantly over this digital field, namely, the Internet.

If we let this keep going, broadcasting organizations would lose their foundation and become extinct.

Would you possibly be able to imagine the society without broadcasting? Of course you wouldn't. I DO wish the discussion here will get back on track once again to substantive one and move on for the establishment of the treaty as early as possible.

Thank you, Mr. Chair.

NORTH AMERICAN BROADCASTERS ASSOCIATION (NABA)
Position paper on the WIPO's new treaty for the protections of broadcasters

The Standing Committee on Copyrights and Related Rights (SCCR), held in Geneva from June 2 to 5, 2009, invited NGOs that did not have an opportunity to make oral interventions to provide their views in writing.

Insufficient Protection for Broadcaster

The Rome Convention does not provide sufficient legal protection for broadcasters. When it was adopted in 1961, little did the world know that it would become both global and digital, and it was not foreseeable that television programs would be distributed by cable, satellites or by rapid recording devices, let alone the advent of webcasting and simulcasting. Even over-the-air broadcasting is at greater risk of piracy in digital formats which is the standard as of June, 2009, in the United States of America, with Canada and Mexico to follow.

The lack of an updated international legal standard of protection for broadcasters is a very critical issue due to the fact that, in a digital world, pirates move quickly through different jurisdictions, with very different levels of protection, making this extremely difficult for broadcasters to take effective action against them. At the Information Session preceding the June SCCR meeting, experts provided many examples of widespread international piracy which cannot be adequately addressed by current legal remedies. Piracy of signals carrying television series, movies and major sporting events occurs regularly across the world by various means including, interception of pre-broadcast signals, decryption of satellite signals and unauthorized retransmission over the Internet.

Treaty completion delayed

NABA wishes to convey its members' deep concern regarding the WIPO Standing Committee on Copyright and Related Rights inability to reach completion of the new treaty to update the protection of broadcasters, after over ten years of discussions. Broadcasters require a modernization of rights similar to what was achieved by WIPO in 1996, for other rights owners. The majority of Member States have consistently supported updating the rights of broadcasters, with many now regarding this as the priority issue for the SCCR as "unfinished business."

Further round of consultations

NABA welcomes SCCR's decision to organize regional and national seminars in order to sharpen the definition of the provisions needed to protect broadcast signals in this new technological world. These consultations should build on WIPO's extensive work to date that includes numerous symposia, seminars and regional meetings that have firmly established the need to update the protection of broadcast signals. The meetings should be informed by all past work, including treaty proposals by Member States, official and unofficial Chairman's papers and Resolutions of the regional consultation meetings in 2005, with a view to agreeing on the parameters for a draft text to found negotiation of a treaty at a diplomatic conference in the near future.

NABA wishes to advise WIPO about the *World Electronic Media Forum* that will take place November 11 to 13, 2009, in Mexico City, Mexico, and suggests that a consultation meeting could be scheduled around that event. NABA is willing to support WIPO in its consultations, as appropriate.

Audio Visual Performers Treaty

Finally, NABA reminds WIPO that broadcasters, as a primary purveyor of audio visual works, have a strong interest in the Audio Visual Performers Treaty and wish to participate fully in all proceedings relating to this treaty.

PUBLIC KNOWLEDGE (PK)

These comments address two issues: the protection of broadcasting organizations and the future work of the Standing Committee on Copyright and Related Rights (SCCR). Public Knowledge urges the Member States of the SCCR not to expend further time and resources on the protection of broadcasting organizations as more than ten years of negotiations has failed to produce a consensus on this issue. However, if Member States feel the need to protect broadcasters, they should adopt a signal-based approach. Further, we urge the Member States of the SCCR to work towards achieving consensus on the proposed treaty relating to copyright limitations and exceptions to facilitate greater access to copyrighted works by the blind, visually impaired, and other reading-disabled persons. The SCCR should also explore the issue of copyright limitations and exceptions further with a view to understanding obstacles posed by copyright laws to free speech, education, and innovation.

The SCCR should not expend further time and resources on the issue of protection of broadcasting organizations

Member States have been unable to reach a consensus on the protection of broadcasting organizations after more than ten years of negotiations. Despite the General Assembly's mandate to pursue a signal-based approach, disagreements about whether protection should be exclusive rights-based or signal-based continue. This division is reflected in the informal paper prepared by the Chairman after the 16th session of the SCCR, which, as the Joint Statement of Certain Civil Society, Private Sector, and Rightsholders Representatives for the 18th session of the SCCR (Joint Statement) notes, simply restates positions that have thus far failed to achieve a consensus.

– *If Member States feel the need to protect broadcasters, a signal-based approach should be adopted.*

A signal-based approach should be understood as the intentional theft or misappropriation of signals[3]. It should aim to prevent wholesale misappropriation of broadcast signals achieved either though civil and criminal penalties or other non-IP protections. We note with concern observations in the informal paper that signal-based protection does not preclude granting of some exclusive rights to broadcasting organizations[4]. Protection in a signal can exist only until the signal is fixed and any exclusive right would give broadcasters rights in content that belong to copyright owners. Thus, granting any exclusive right would be incompatible with a signal-based approach.

– *An exclusive rights-based approach is not justified and would harm consumers and copyright owners.*

Proponents of a treaty for protection of broadcasting organizations have offered no justification for a treaty based on exclusive rights for broadcasters. While some presenters at the information session organized at the SCCR on May 25, 2009, highlighted the theft of broadcast signals and their retransmission over the Internet, neither of these harms justifies an exclusive rights-based treaty. A signal-based approach would be sufficient to remedy the problem of signal theft. As the Joint Statement notes, retransmission of signals over the Internet involves transmission from fixations and does not present harm to broadcasters. Rather, it implicates the rights of the owners of the content that is retransmitted and any possible harm from retransmission is adequately addressed by national and international copyright regimes.

An exclusive rights-based approach would harm consumers by requiring Member States to give broadcasters rights in content already held by copyright owners. Such rights would enable broadcasters to prevent uses that are now possible under limitations and exceptions to copyright rights. Examples of such uses range from private uses such as home recording and home networking to institutional uses such as classroom performance of recorded television programming. Further, exclusive rights for broadcasters would also harm creative communities such as musicians and documentary film-makers who rely on existing content to create their own content. These communities would be forced to seek two sets of permissions for reuse of existing content – one from the copyright owner and the other from the broadcaster.

The SCCR's future work should focus on copyright limitations and exceptions

The Member States of the SCCR should work towards adopting a treaty that would secure for the world's blind, visually impaired, and reading disabled persons easier access to

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[3] *See* Statement from Intergovernmental and Non-governmental Organizations, Annex at 44, WIPO SCCR/15/4 (July 19, 2006), *available at: http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=65672.*

[4] The Chairman, Standing Committee on Copyrights and Related Rights, *The WIPO Treaty on the Protection of Broadcasting Organizations: Informal Paper Prepared by the Chairman of the Standing Committee on Copyrights and Related Rights (SCCR) According to the Decision of the SCCR at its 16th Session*, ¶ 40, SCCR/17/INF/1, (November 3-7, 2008), *available at*: http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109212

the printed world. The study commissioned by WIPO[5], clearly sets out problems of access faced by this community. These problems require an international solution. The proposal submitted by the delegations of Brazil, Ecuador, and Paraguay presents a framework that member states can use in moving towards a consensus on this issue.

The Member States of the SCCR should also focus on the resources and expertise of the SCCR towards studying how the international copyright regime affects users' rights to access knowledge. In particular, this work should explore whether copyright rights are affecting the ability of libraries and educational institutions to disseminate knowledge, the ability of users to access knowledge, and the ability of users and technology providers to harness the potential of digital technology fully.

We thank the Standing Committee for giving us an opportunity to present out views and remain at your disposal to answer any questions.

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[End of Annex and of document]

[5] Judith Sullivan, *Study on Copyright Limitations and Exceptions For the Visually Impaired*, SCCR/15/7, (September 11- 13, 2006), *available at*: *http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=75696*