

## **Standing Committee on Copyright and Related Rights**

**Twenty-Second Session**  
**Geneva, June 15 to 24, 2011**

Report

*adopted by the Committee*

1. The Standing Committee on Copyright and Related Rights (hereinafter referred to as the “Standing Committee, “or the SCCR”) held its twenty-second session in Geneva from June 15 to 24, 2011.
2. The following Member States of the World Intellectual Property Organization (WIPO) and/or members of the Bern Union for the Protection of Literary and Artistic Works were represented in the meeting: Algeria, Angola, Argentina, Australia, Austria, Barbados, Belgium, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Congo, Costa Rica, Côte d’Ivoire, Czech Republic, Cyprus, Democratic Republic of Korea, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Gabon, Germany, Ghana, Greece, Guinea, Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Japan, Jordan, Kenya, Kuwait, Kyrgyzstan, Lithuania, Malawi, Malaysia, Mexico, Monaco, Morocco, Myanmar, Nepal, New Zealand, Nigeria, Norway, Oman, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Russian Federation, Senegal, Serbia, Singapore, Slovenia, South Africa, Spain, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, Tunisia, Turkey, United Kingdom, United States of America, Uruguay, Venezuela (Bolivarian Republic of), Zambia, Zimbabwe (89).
3. The European Union (EU) participated in the meeting in a member capacity.
4. The following intergovernmental organizations took part in the meeting in an observer capacity: African Regional Intellectual Property Organization (ARIPO), African Union (AU), Arab States Broadcasting Union (ASBU), International Labour Organization (ILO), South Centre World Trade Organization (WTO) (5).
5. Actors, Interpreting Artists Committee (CSAI), *Agence pour la protection des programmes* (APP), American Council of the Blind (ACB), Asia-Pacific Broadcasting Union (ABU), *Asociación Nacional de Interpretes* (ANDI), *Associação Brasileira de Emissoras de Rádio e Televisão* (ABERT), Association IQSensato (IQSensato), Association of Commercial Television in Europe (ACT), Association of European Performers’ Organizations (AEPO-ARTIS), Beneficent Technology, Inc. (Benetech), British Copyright Council (BCC), Central and Eastern European Copyright Alliance (CEECA), Centre for Internet and Society (CIS), Centre for Performers’ Rights Administration (CPRA), *Comité national pour la promotion sociale des aveugles et amblyopes* (CNPSAA), Computer and Communication Industry Association (CCIA), Copyright Research Information Center (CRIC), Daisy Consortium, Electronic Frontier Foundation (EFF), Electronic Information for Libraries (eIFL.net), European Broadcasting Union (EBU), European Federation of Joint Management Societies of Producers for Private Audiovisual Copying (EUROCOPYA), European Law Students’ Association (ELSA International), European Visual Artist (EVA), *Fundação Getúlio Vargas* (FGV), German Association for the Protection of Industrial Property and Copyright Law (GRUR), Ibero-Latin-American Federation of Performers (FILAIE), Inclusive Planet Foundation, Intellectual Property Owners Association (IPO), International Association for the Protection of Intellectual Property (AIPPI), International Bar Association (IBA), International Center for Trade and Sustainable Development (ICTSD), International Chamber of Commerce (ICC), International Confederation of Music Publishers (ICMP), International Federation of Actors (FIA), International Federation of Associations of Film Distributors (FIAD), International Federation of Film Producers Associations (FIAPF), 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 Publishers Association (IPA), International Video Federation (IVF), Internet

Society, Library Copyright Alliance (LCA), Motion Pictures Association (MPA), National Association of Commercial Broadcasters in Japan (NAB-Japan), National Federation of the Blind (NFB), Nigeria Association of the Blind, North American Broadcasters Association (NABA), *Organização Nacional de Cegos do Brasil* (ONCB), *Organización de Asociaciones y Empresas de Telecomunicaciones para America Latina* (TEPAL), Royal National Institute, of Blind People (RNIB), *Sociedade Portuguesa de Autores* (SPAUTORES), South African National Council for the Blind, Sports Rights Owners Coalition (SROC), Third World Network (TWN), Transatlantic Consumer Dialogue (TACD), *Union Africaine de Radiodiffusion* (UAR-URTNA), *Unión Latinoamericana de Ciegos* (ULAC), Union Network International - Media and Entertainment International (UNI-MEI), Vision Australia, World Blind Union (WBU) (64).

## **OPENING OF THE SESSION**

6. The Director General welcomed all the delegations and opened the twenty-second session of the SCCR. The Committee was going to deal with four substantial issues. From June 15 to 17, 2011 the item of exceptions and limitations relating to print disabilities was scheduled. On the issue of limitations and exceptions for persons with print disabilities, he thanked the four proponents of the draft instruments for the discussions carried out over the previous months, with the objective of finding an agreement on a consolidated text. He expressed his hope to see progress in that exceptionally important area. The question of other limitations and exceptions, notably for libraries, archives and educational institutions was scheduled for discussion during the incoming week. Regarding the protection of broadcasting organizations, an array of documents were to be studied and discussed, including the proposals of the Delegations of South Africa, Canada, Japan, the paper of the Secretariat concerning results and outcomes of the regional seminars conducted on the issue, the paper prepared by Ms. Alexandra Grazioli, Chair of the informal consultation on broadcasting, and the conclusions of a meeting held in Johannesburg the week before on the issue. Regarding audiovisual performances there were a number of documents to guide the discussions including proposals from the Delegations of United States of America, Brazil, Mexico and India, as well as an analytical document on the results and outcomes of the regional seminars and the recommendations of the Chair of the open-ended consultations. The Director General expressed his deep appreciation and gratitude to the long-serving outgoing Chair, Mr. Jukka Liedes, who had been one of the institutions in the international copyright community.

## **ELECTION OF A CHAIR AND TWO VICE-CHAIRS**

7. The Director General opened the floor for proposals for a Chair and Vice Chairs for the current session of the Committee.
8. The Delegation of Pakistan, on behalf of the Asian Group, informed that prior to the session the coordinators had met to discuss the chairmanship for 2012-2013. As a result of the consultations, it proposed the candidate of Mexico for chairing the SCCR sessions in 2011 and the candidate of Zambia for chairing the SCCR session in 2012.
9. The Director General asked the Delegation of Pakistan if it had any proposals for the Vice-Chairs.
10. The Delegation of Pakistan responded that its understanding was that China was proposed as one of the Vice-Chairs.

11. The Director General understood, as outcome of various meetings among the regional coordinators, that an agreement was reached that Mr. Manuel Guerra Zamorro (Mexico) would be elected Chair for 2011 and Ambassador Darlington Mwape for 2012. The Vice chairs were going to be Mr. Xu Chao of China and Ms. Alexandra Grazioli of Switzerland.
12. The Delegation of France, on behalf of Group B, expressed satisfaction for the nominations for chairmanship and vice-chairmanship. It recalled that consultations were under way on the modalities of appointments of Chairs and hoped a generalized mechanism could be found in the future.
13. The Delegation of South Africa, on behalf of the African Group, supported the statement made by the Delegation of Pakistan reflecting the agreement reached in previous negotiations. Nominations were agreed upon for 2011; for 2012 the Chair would be the candidate of Zambia, while the selection of the Vice-Chairs had not been finalized.
14. The Director General suggested the interventions were recorded in the report and invited Mr. Manuel Guerra to preside over the meeting.
15. The Chair expressed his profound gratitude to all the Member States for entrusting to him the chairmanship of the Committee debating highly important issues. He was familiar with the concerns of the regional Groups and fully aware of the potential pitfalls. He was fully committed to ensure a transparent and impartial chairmanship, being fully respectful of the positions of each and every one of the distinguished delegates. A positive outcome required the utmost cooperation of all the delegations. He also called upon the Secretariat to ensure that it provided full support to interpret the will and positions of each of the delegations and appropriate responses to any technical concerns. Finally he expressed sincere gratitude to the outgoing Chairman, Mr. Jukka Liedes for the work he had undertaken since the first session of the SCCR.

#### **ADOPTION OF THE AGENDA OF THE TWENTY-SECOND SESSION**

16. The Chair proposed to adopt of the Agenda in document SCCR/22/1 Prov.
17. The Delegation of India, on behalf of the Development Agenda Group (DAG), proposed the addition of a specific agenda item in order to ensure that the SCCR complied with the 2010 WIPO General Assembly decision with regard to the adoption of the coordination mechanism for implementation of the WIPO Development Agenda in all relevant WIPO bodies. It was evident that the work of the SCCR was relevant to the Development Agenda and its recommendations. It was important for the SCCR to consider how it was mainstreaming the Development Agenda in its work and to report to the upcoming WIPO General Assembly. Regarding the modalities of the reporting, it was proposed to simply follow the practice adopted already by other bodies in order to ensure that the discussion did not detract time from other substantive discussions on the agenda and also to ensure that things were kept simple and straightforward. Delegations should be allowed to present their views under that agenda item, and those views might be forwarded to the General Assembly for its consideration. It therefore proposed the inclusion of a new agenda item 10 after the current agenda item 9 on the protection of audiovisual performances. The proposed new agenda item 10 would read as follows: "Contribution of the SCCR to the implementation of the respective Development Agenda recommendations."
18. The Chair opened the floor for comments on the proposal made by the Delegation of India concerning the inclusion of an additional agenda item number 10 referred as "the

contribution of the SCCR to the implementation of the respective Development Agenda recommendations."

19. The Delegation of France, speaking on behalf of Group B, indicated that the Group was in a position to adopt the agenda in general, as contained in document SCCR/22/1 Prov. Regarding the proposal made by the Delegation of India for the addition of a new item 10, it needed to consult within Group B. Furthermore, it proposed reversing the order of the items in such a way as to cover item 9 on audiovisual performances, followed by item 8 on broadcasting organizations and, finally, item 7 on limitations and exceptions.
20. The Delegation of Pakistan, on behalf of the Asian Group, supported the proposal by the Delegation of India and believed that, in compliance with the WIPO General Assembly's mandate, the SCCR should report to the General Assembly on its work on the implementation of the Development Agenda. In relation to the proposal put forward by the Delegation of France there was a need to discuss the issue within the regional Group.
21. The Delegation of Brazil supported the proposal made by the Delegation of India, on behalf of the Development Agenda Group (DAG), to have a specific agenda item on the reporting on the implementation of the Development Agenda recommendations. Regarding the proposal made by the Delegation of France, its understanding was that during the consultations on audiovisual performances some delegations had expressed the interest in having the issue as the first agenda item, but there was no agreement to put limitations and exceptions as the last item.
22. The Delegation of Slovenia, on behalf of the Group of Central European and Baltic States, believed that the new addition proposed by the Delegation of India should be discussed further informally since an agreement on that modification had not been reached. The agenda could be adopted at a later stage.
23. The Delegation of South Africa, on behalf of the African Group, endorsed the addition of a new agenda item as proposed by the Delegation of India. On the proposal made by the Delegation of France some discussion within the regional Group was needed.
24. The Chair proposed to adopt in general terms the agenda and to include the proposed item 10 tabled by the Delegation of India.
25. The Delegation of Venezuela (Bolivarian Republic of) hoped the mandate of the General Assembly was respected and expressed support to the Indian proposal on behalf of Development Agenda Group. It hoped the Legal Counsel of WIPO could advice on the issue of the agenda.
26. The Chair recognized the need to consult the Legal Counsel of WIPO on that point, but proposed that the Committee accepted the agenda in general terms with inclusion of the proposal of the Delegation of India, on behalf of the Development Agenda Group, and fix the order of the agenda items order at a later stage.
27. The Delegation of India suggested solving the issue during the plenary session of the afternoon that day, before the Committee moved forward with its work.
28. The Delegation of France, on behalf of Group B, supported the proposal of Slovenia.
29. The Delegation of Slovenia, on behalf of the Group of Central European and Baltic States, proposed that the Committee provisionally adopt the original agenda and any modifications should be discussed in a later stage.

30. The Delegation of Iran (Islamic Republic of) endorsed the position of the Development Agenda Group and of the Asian Group. In its view the inclusion of the new agenda item was based on the 2010 General Assembly mandate.
31. The Delegation of Australia supported to seek the advice of the Legal Counsel on the possibility of suspending the discussions on the approval of the agenda and move forward with other items.
32. The Delegation of Angola proposed to have a short break in order to allow some consultation on the matter.
33. The Chair believed it was important to move forward and suggested the agenda be adopted in a general way. He asked the Legal Counsel to take the floor.
34. The Legal Counsel of WIPO said it was perfectly possible for the Committee to continue with substantive agenda items and to adopt the agenda at a later stage.
35. The Delegation of Nigeria endorsed the proposal to proceed with substantive issues.
36. The Delegation of Mexico echoed the previous proposals to continue with the work on a provisional basis.
37. The Delegation of the United States of America proposed to approve the agenda until item 7 and to leave the approval of the full agenda for a later stage.
38. The Delegation of Venezuela (Bolivarian Republic of) stated that the Committee could not start the negotiations without adopting the agenda, and therefore supported the proposal from the United States of America.
39. The Delegation of South Africa, on behalf of the African Group, said that the Group could not accept to adopt only items from 1 to 6, but it was open to proceed with substantial issues and come back on the agenda at a later stage.
40. The Chair confirmed that the adoption of the agenda was deferred to a later stage and opened item 4, referring to document SCCR/22/13 on the accreditation of new non-governmental organizations.

#### **ACCREDITATION OF NEW NON GOVERNMENTAL ORGANIZATIONS**

41. The Committee approved the accreditation of the Indian Broadcasting Foundation as an *ad hoc* observer to the SCCR.

#### **ADOPTION OF THE REPORT OF THE TWENTY-FIRST SESSION OF THE STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS**

42. The Chair proposed that if at the moment there were no substantive remarks on the draft report of the 21st session, document SCCR/21/12 Prov., technical corrections and amendment proposals to the draft report could be considered by the Secretariat until June 24, 2011.
43. The Committee approved the report of the 21st session.

## General Statements

44. The Chair asked the African Group whether it was in the position to present document SCCR/22/12, which included a proposal from the African Group on exceptions and limitations for persons with print disabilities.
45. The Delegation of South Africa clarified that the proposal was a revision of the draft proposal that was submitted in the 21st session of the SCCR. It did not mean to put in question anything it was agreed upon the previous year. The original proposal took inspiration from the draft treaty submitted by Brazil, Ecuador and Paraguay and supported by Mexico, with the addition of some revisions.
46. The Delegation of Venezuela (Bolivarian Republic of) raised some doubts regarding the way of proceeding and proposed to start with general statements.
47. The Delegation of France, on behalf of Group B, supported the request to make general statements first.
48. The Chair explained that the question to the African Group was simply to find out a little bit more about the proposal that had been recently submitted. He opened the floor for opening statements.
49. The Delegation of Pakistan, speaking on behalf of the Asian Group, recalled that the Committee had a lot of work and hoped that it would reach positive results on the important topics for developed and developing countries. With regard to broadcasting organizations, it took note of document SCCR/22/9 regarding results of 2010 broadcasting seminars. It welcomed the informal meeting on the protection of broadcasting organizations held in 2011 and it understood that the consultation meeting involving technical experts was mandated to clarify outstanding technical issues, relevant for the protection of the broadcasting organizations, by following the signal based approach, mandated by the WIPO General Assembly in 2007. The Asian Group reiterated its support to develop a treaty to protect broadcasting and cablecasting organizations in the traditional sense. With regard to the protection of audiovisual performances, the Asian Group urged the Committee to continue its work on the proposed treaty. Taking into account document SCCR/22/10 and the work carried out during the informal consultations on the protection of audiovisual performances held in Geneva on April 13 and 14, 2011, the SCCR should examine new proposals and made recommendation in the current session. It took note with interest the new proposals by the Delegations of Brazil, India, Mexico and United States of America, as well as the efforts made by the Delegations of India, Mexico and the United States of America to come up with a joint proposal in relation to Article 12. It looked forward to a positive outcome in that respect. It was important that norm-setting activities in WIPO were not limited to intellectual property rights, but reflected a broader social and development context. With a view to provide for greater balance it was important to have a framework for safeguarding the public framework. Furthermore, it expressed appreciation for the work of the SCCR on exceptions and limitations that were crucial to maintain a balance. The Group was ready to proceed with the work on the basis of the treaty proposal put forward by the Delegations of Brazil, Ecuador, Paraguay and Mexico, as well as all the other proposals which had been put forward during the previous sessions. It looked forward to participating constructively in the discussions with the hope that progress could be achieved on establishing the normative framework on exceptions and limitations. It also looked forward to the conclusion of negotiations on limitations and exceptions for persons with reading disabilities and the convening of a diplomatic conference for the adoption of legal instruments on the issue. At the same time it hoped that the Committee would also discussed the issues of limitations and exceptions encompassing other areas of

public policies. In that context the Asian Group supported the future work of the Committee with a sequential approach on all the issues.

50. The Delegation of Venezuela, speaking on behalf of GRULAC, reiterated its willingness to cooperate in the work to be undertaken. It reaffirmed its commitment to ensure substantive progress enabling the Committee to reach consensus on various issues, while striking the balance for the benefit of all stakeholders. GRULAC was willing to make progress towards the adoption of a treaty to improve access to visually impaired persons and other persons with print disabilities and considered the substantive progress made on limitations and exceptions highly important. The adoption of that treaty would enable access to knowledge for vulnerable sectors of the population. The proposal was closely connected to the principles and objectives of the United Nations Convention on the Rights of Persons with Disabilities since it promoted full and equal enjoyment of fundamental human rights and freedoms for all persons with disabilities. Moreover GRULAC stressed the importance of protecting copyright and related rights as basic tools to enable the driving forward of social and economic development for all countries. It wished to extend special thanks to the Delegations of Brazil, Ecuador, Paraguay and Mexico for their efforts to achieve consensus among Member States with a view to achieving a treaty.
51. The Delegation of South Africa, on behalf of the African Group commended the efforts made by the Secretariat in organizing open-ended and informal consultations on the protection of audiovisual performances and broadcasting organizations from April 13 to 15, 2011. Those consultations had further reinforced the importance of those issues. In that regard, the African Group remained supportive to work towards the finalization of the treaty on audiovisual performances and on finding a way forward on the negotiation for the protection of broadcasting organizations. The Group also expressed its gratitude to the Delegations of European Union, the United States of America and Brazil for hosting meetings in preparation of the session of the SCCR. The African Group had participated constructively and continued to engage positively in informal consultations with proponents of the other three proposals on exceptions and limitations for persons with print disabilities. It hoped that the same spirit of cooperation prevailed in future sessions when the issue of limitations and exceptions for educational, teaching and research institutions and for persons with other disabilities would be discussed. To that end, the African Group had submitted a document entitled draft WIPO Treaty on Exceptions and Limitations for Persons with Disabilities, Educational and Research Institutions, Libraries and Archives included in document SCCR/22/12 for the consideration of the Committee. The document was a revision of the draft treaty submitted by the African Group during the 20th session of SCCR (document SCCR/22/11). The draft did not suggest reemerging from the work adopted by the Committee at its previous session but rather clarified the position of the African Group. Finally the African Group looked forward to a constructive engagement and to reach agreement on a way forward on all three substantive agenda items of the agenda.
52. The Delegation of France, speaking on behalf of Group B, thanked the Secretariat for organizing consultations on the protection of both audiovisual performances and broadcasting organizations. Several members of the Group had also been actively involved in the informal consultations on limitations for persons print disabilities trying to identify common ground and promote convergence among the different proposals. The current session of the SCCR was of the utmost importance in view of the subsequent General Assembly in September 2011. Group B was deeply committed to improve the access of print and other reading disabled persons to copyrighted works as reflected in the regional and national legislation of its Member States. It looked forward to achieving an effective and expeditious solution both to facilitate cross-border circulation of adaptive format, as well as the extension of that type of legislation to as many countries as possible. It also emphasized the important role played by the Stakeholders' Platform the efforts of



which should continue in parallel with the SCCR efforts to establish norms. On the protection of audiovisual performances, the SCCR should maximize its current efforts in order to agree on the text of a treaty. Such a treaty would greatly contribute to cultural and economic development as well as promote cultural diversity. Group B continued to believe that the Committee should move towards a treaty providing a properly calibrated protection for broadcasting organizations.

53. The Delegation of Slovenia, on behalf of the Group of Central European and Baltic States, recognized the importance of the protection of audiovisual performances and thanked the WIPO Secretariat for the preparatory work done. It hoped that the agreement to reconvene the diplomatic conference would be reached at the current session of the SCCR. The previous session of the SCCR proposed that an agreement on the timetable of future work on the protection of broadcasting organizations should be reached. Therefore, it was the collective responsibility of the Committee to fulfill those commitments and strive toward that goal. In the latest SCCR sessions a strong emphasis had been placed on improvement on the access to protected works by persons with a print disability. It thanked the Secretariat for the comparative list of proposals relating to copyright exceptions and limitations for persons with print disabilities. The Group believed that the joint recommendation submitted by the EU provided the most efficient and practical solution which would tackle obstacles in an expedited way. It also supported informal discussions taking place among the four proponents and hoped those discussions would be successful.
54. The Delegation of China hoped that during the current session the Committee achieved substantive results. The Delegation was very much interested in all the items to be discussed and had a flexible approach towards all constructive proposals.
55. The Delegation of Iran (Islamic Republic of) supported the statements made by the Delegation of Pakistan, on behalf of the Asian Group, and by the Delegation of India, on behalf of the Development Agenda Group. The previous session of SCCR had worked in a positive atmosphere and had reached a great outcome. It believed that there was an urgent need to protect broadcasting organizations and prevent signal piracy. It supported the establishment of a new treaty to protect the signals of broadcasting organizations as mandated by the General Assembly in 2007. In that regard it welcomed the drafting of a treaty on the protection of broadcasting organizations presented by the Chair of the informal consultations. The document had recognized important elements and specific scope and objective of the treaty as mandated by the General Assembly in 2007 which had provided a ground for the start of negotiations and discussions with the hope of solving the outstanding issues. In that process the legitimate concerns of the developing countries, namely the possible implication for access to information and content, especially those in public domain, should be taken into account by the inclusion of robust exceptions and limitations. The Delegation was not willing to accept the protection of webcasting organizations and the protection should not be extended to the organizations other than broadcasting, which used web as a service provider for their activities such as universities or research centers. With regard to the protection of audiovisual performances, it was committed to engage constructively on developing international protection for audiovisual performances taken in due account the new developments occurred since the 2000 diplomatic conference. With regard to the limitation and exceptions it was glad to see a concrete work plan as well as a specific timetable and devoting of three extra days to develop normative framework on limitations and exceptions was important. It was time for the Committee to start the negotiations on a treaty for limitations and exceptions for copyright materials in all areas. To solve the challenge of visually impaired persons all Member States were to find an effective solution to the problems. Therefore the SCCR benefiting from three extra days devoted to the issue with a view to recommend to the

General Assembly to consider holding a diplomatic conference in 2012. It believed that only a binding framework would ensure sustainable access to the copyrighted works.

56. The Delegation of the European Union and its 27 Member States hoped that the SCCR would be able to agree to a constructive way forward on all the issues on the agenda in a balanced manner. During the informal consultations, participants had been able to examine the proposals from the Delegations of India, Mexico and the United States of America on the article dealing with transfer of rights. It hoped that differences could be narrowed and that the SCCR could have reconvened a diplomatic conference to finally achieve international protection for audiovisual performances. During the informal consultations, the presentations made by the Delegations from Canada, Iran, Japan and South Africa, as well as organizations such as the International Olympic Committee confirmed the need to protect broadcasting organizations against piracy. It looked forward to discussing the document prepared by the Chair which hopefully would result in the possibility of making concrete progress on the issue of broadcasting organizations. The subject of limitations and exceptions for persons with print or reading disabilities was also important and had been given much consideration by participants of the Standing Committee. It had been working with other proponents in that area to find common positions and looked forward to presenting the results of the work. It also informed the SCCR that on the May 24, an IPR communication entitled a Single Market for Intellectual Property Rights, which proposed an overall strategic vision in the area had been adopted by the European Commission.
57. The Delegation of Brazil, intervening on behalf of the co-sponsors of the proposal of the treaty on copyright exceptions and limitations to the benefit of visually impaired persons, recalled that at the previous session of the Committee Member States had agreed to a work program for the subsequent three sessions. According to the work plan, the Committee would undertake text-based work with the objective of reaching an agreement on appropriate exceptions and limitations for visually impaired persons in the first session; and libraries and archives and educational and research institutions and other disabilities in the following two sessions. Such work program also requested the SCCR to submit a recommendation to the General Assembly on all the topics of the agenda in accordance with the specific timetable. Member States were presented with the opportunity to recommend to the General Assembly the convening of a diplomatic conference to approve the treaty on exceptions and limitations for the benefit of visually impaired. There were currently 161 million people worldwide who were blind or visually impaired, and further 134 million had uncorrected visual impairment. Ninety percent lived in the developing world. In spite of that, even in the wealthiest markets less than 5 percent of published books were available in accessible formats. There was a book famine depriving people of access to education, culture and entertainment. The treaty would provide visually impaired persons with the opportunity to develop and utilize their creative, artistic and intellectual potential and also for the enrichment of society and their benefit and help Member States to implement Article 30 of the United Nations on the Convention on the Rights of Persons with Disabilities. The SCCR should take all appropriate steps in accordance with international law to ensure that laws protecting intellectual rights did not constitute an unreasonable barrier. The draft treaty addressed two fundamental elements; first it required that all countries had in the national law exceptions and limitations to the benefit of visually impaired, promoting access to education, culture and entertainment; and, second, it required that such exceptions and limitations provide for the cross border sharing of works in accessible formats. The treaty provisions should be flexible enough to allow countries to implement them according to their own legal systems and practice but they should also be specific enough to provide legal certainty to those involved in the reproduction, distribution and making available accessible format. The four groups of countries that had presented proposals on limitations and exceptions for the visually

impaired had been working together to try to converge in to a single text, which could be the basis for the negotiations.

58. The Delegation of India, on behalf of the Development Agenda Group (DAG), was optimistic that progress would be made on all the important issues that reflected the shared interests of both developed and developing countries. The issue of exceptions and limitations was particularly important for the Group since it was an important tool to bring in the necessary balance between the interests of rights-holders and the larger public interest. It supported the text-based negotiation with the objective of reaching agreement on appropriate exceptions and limitations for visually impaired persons. The main focus of the current session was the issue of a treaty for facilitating access to protected books and written material for the visually impaired. In that context the Group welcomed the treaty proposal put forward by the Delegations of Brazil, Ecuador, Paraguay and Mexico, as well as other proposals. The progress made by the proponents of the various proposals as well as the European Union, the United States of America and the African Group, was encouraging and informal consultations on the subject were appreciated. It was vital that a treaty ensured that all countries had in their law exceptions and limitations to facilitate access to reading material for the visually impaired while also providing for the cross-border sharing of works in accessible formats. It believed that the current session represented a historic opportunity to all WIPO Member States to contribute tangibly to persons worldwide by recommending to the next General Assembly to convene a diplomatic conference. The members of the Group stood ready to work in a spirit of goodwill to achieve positive outcomes. It looked forward to the inclusion of the proposed new agenda item 10 that would enable the Committee to discuss how it was contributing to the mainstreaming of the WIPO Development Agenda and allowed to report to the WIPO General Assembly as mandated in 2010. That was particularly relevant given the ongoing discussions in the Committee, especially on limitations and exceptions. It looked forward to a rapid adoption of the agenda with the inclusion of item 10.
59. The Delegation of India, speaking in its national capacity, appreciated the sincere efforts of the Secretariat to organize three additional working days exclusively dedicated to discuss limitations and exceptions for visually impaired persons, especially to discuss the four proposals to reach a compromise on the matter. It reported that the European Parliament had passed a resolution supporting the adoption of the WIPO treaty for copyright exceptions for visually impaired and other print disabled persons. The Delegation believed that there was an urgent need to move towards to facilitate access to copyrighted material in all accessible formats to persons with disabilities. and reiterated its support to the proposals of the Delegations of Brazil, Ecuador, Paraguay, Mexico and the United States of America for improved access to blind, visually impaired and other reading disabled persons. It expressed its appreciation for the informal consultations on the protection of broadcasting organizations held in Geneva in April 2011. The non-paper with elements for a draft treaty on protection of broadcasting organizations (document SCCR/22/11) submitted for the current session SCCR had brought back all the objectionable ingredients of webcasting and signal casting which was against the mandate of the General Assembly of 2007. . It expected the discussions could lead towards fruitful solutions on the transfer of rights and the protection of audiovisual performances as agreed in the open-ended consultations held in April 2011. The Delegation of India was in touch with the Delegations of the United States of America and Mexico to develop a proposal on that matter.
60. The Delegation of Argentina supported the proposal made by the Delegations of Brazil, Paraguay, Ecuador and Mexico with regard to a future binding instrument on exceptions and limitations for visually impaired persons and other persons with reading disabilities included in the document SCCR/18/5. The proposal would improve access to information for a sector of the society which was facing major obstacles to enjoy full use of cultural and

scientific works. It was important to strike an appropriate balance to ensure the respect of human rights, an issue also closely linked to the general principles of the WIPO Development Agenda. The UN Convention on the Rights of Persons with Disabilities provided that States should take all appropriate measures in accordance with international law to ensure that intellectual property legislation did not constitute a barrier or a form of discrimination for access for disabled persons to cultural materials. It announced that Argentina had decided to co-sponsor the proposal of the Delegations of Brazil, Ecuador, Paraguay and Mexico.

61. The Delegation of Uruguay expressed support to reach agreement with a view to ensuring that the proposal for a treaty for the benefit of the visually impaired be transformed into a binding international instrument. Uruguay together with the Delegations of Brazil, Chile and Nicaragua had co-sponsored in the 16th session of the SCCR a proposal concerning limitations and exceptions. Uruguay had hosted important meetings in May 2009 and in May 2011, where delegates from the intellectual property offices in Latin America, organizations representing the blind, and individual and collective rights-holders organizations had participated. In order to ensure the legitimacy of the international copyright system, a treaty should be in accordance with the UN Convention on the Rights of Persons with Disabilities. The Berne Convention, as well as the WIPO Treaties of 1996 also included the possibility of exceptions to copyright and related rights. The international framework was lacking in various areas as it did not expressly take into account the needs of the reading impaired and those exceptions were established nationally and were limited in scope.
62. The Chair opened the afternoon session and reminded that at 4.30 p.m. a High-Level Dialogue on Copyright organized by the Director General of WIPO was going to take place.
63. The Delegation of Nigeria pointed out that the Committee was at a critical stage, and there was a clear need to move forward on the various key issues on the agenda. It hoped the regional Groups and national Delegations were willing to show flexibility to reach positive results. One of the key issues was the treaties for the protection of audiovisual performances and for the protection of broadcasting organizations. The reports of all the regional consultations held in 2010 and the outcome of open-ended consultations showed that the Committee was moving towards a consensus. It hoped that the outstanding issue of transfer of rights under the treaty for the protection of audiovisual performances would be resolved at the ongoing session, and a recommendation would be made to the General Assembly to take a decision on the convening of a Diplomatic Conference at the earliest possible time. Regarding the protection of broadcasting organizations, the Delegation stressed that a treaty on the matter would be beneficial to all countries, and could help investment in the sector in addition to competitiveness and access to information and knowledge. The Delegation of Nigeria continued to support the position of the African Group on the subject. On the issue of limitations and exceptions, it supported the treaty approach and in particular the African Group position on holistic approach as contained in document SCCR/22/12. Similarly it was important to adopt measures to address social, economic, cultural and technological issues affecting developing countries. Nigeria had an estimated population of 5.5 million that were either blind or have other forms of visual impairments.
64. The Delegation of the Russian Federation thanked the Secretariat for having provided the translation into Russian of all the documents. It supported the position of the majority of the Delegations that there was a need to move forward promptly toward concrete results. It thanked for all the preparatory work reflected in the documents on broadcasting, audiovisual performance, and limitations and exceptions. All Member States knew that it was necessary to find a good international mechanism that made it possible both in terms

of national legislations and the international context to make decisions serving the interests both of the general public and the rightholders. It supported the idea to start working on concrete documents, including draft treaties, to allow the SCCR to issue definitive recommendations to the General Assembly to convene a Diplomatic Conference. There was also a need to make progress with regard to the audiovisual performances issue.

65. The Delegation of the United States of America addressing the issue of the audiovisual treaty endorsed the interventions of the Delegation of Nigeria. It was committed to reach an agreement, in particular on the outstanding issue of Article 12. Its work had started with the Delegations of India and Mexico to find a consensus proposal in the incoming days. It believed that the 19 Articles served as a basis for moving forward and it looked forward to working with the Delegation of Brazil on some of the concerns and questions they had raised. Concerning the draft treaty on the protection of broadcasting organizations, the United States of America had been pleased to attend the informal consultations organized by the Secretariat. It was also pleased to see the new suggestions put forward by South Africa. The problem of signal piracy must be addressed, but it shared the concerns of other delegations that protection of broadcasting organizations must be properly calibrated and should not harm the public domain. On the topic of limitations and exceptions, copyright exceptions for persons with print disabilities were a priority. The Africa Group, the European Union, the Delegations of Brazil, Mexico, Ecuador, Paraguay and the United States of America had been holding informal meetings in an effort to reach consensus on both the substance of new international copyright legal norms for persons with print disabilities, and the procedure to achieve those norms. Four large meetings had been held, hosted by Brazil, the United States of America, the European Union and Mexico. The meetings had not been easy but the efforts had been sincere, genuine and in good faith. As stated by other delegations, a large number, perhaps most of the Member States of the SCCR had ratified the UN Convention on the Rights of Persons with Disabilities. The United States of America was in the process of ratifying that Convention. Article 30 thereof obliged Member States to take appropriate measures to ensure copyright law did not constitute an unreasonable or discriminatory barrier to access to cultural materials for persons with disabilities. Although it was already a binding treaty obligation, there were dozens of Member States both Party to the Convention and Members of the Committee that apparently did not yet comply with that binding obligation. It hoped that the SCCR succeeded in establishing new international legal norms on both copyright exceptions and on cross-border exchange of special format copies. As a final thought, it suggested that it was not enough to have an international norm in place; there was a need for a program, a structure to give countries an incentive to bring their law into compliance with those norms.
66. The Delegation of Paraguay said that copyright was to be in balance with other legitimate rights of other members of society and, in particular, access not only to facilitate education and access to culture, but also to enable creation of art and knowledge. Most of the countries had not regulated the exceptions and limitations for the blind and other people with disabilities and that session was an opportunity to reach consensus to move forward towards a treaty that would protect the needs of persons with disabilities, including the cross-border transfer of works in accessible formats. Adopting an international treaty was the only normative manner of ensuring that Member States would be able to have an interchange of different formats, and to be able to distribute and disseminate information. There was a need to identify specific dates for a diplomatic conference in order to deal with that crucial issue without delay.
67. The Delegation of South Africa, speaking in its national capacity, aligned itself with the statement made by the African Group. It reiterated its position regarding the importance of a balanced approach between the intellectual property rightholders and public interests. It was therefore pleased with the progress made on the limitations and exceptions on

copyright and related rights. It remained committed to fulfill the parameters of the work program adopted at the 21st session of the SCCR. With respect to the protection of audiovisual performances, it hoped to see finalization of the outstanding article on transfer of rights with a view to recommending to the General Assembly the reconvening of the Diplomatic Conference to adopt a Treaty. South Africa had made a proposal on the protection of broadcasting organizations the main feature of which was a technology-neutral approach. That meant that the protection should not be tied to any specific platform. Hence, it suggested reviewing the decision of the 2007 General Assembly which mainly included broadcasting in the traditional sense.

68. The Delegation of Ecuador expressed the desire to apply the norms of intellectual property as a tool for economic, social and cultural development for the society, in full respect of the norms regarding human rights. It was very important that the SCCR talked about initiatives to obtain better conditions for artists, but also on the issue of limitations and exceptions. The Delegation wanted to discuss the promotion of other rights like education or non-discrimination and believed that the work on limitations and exceptions was very positive. International norms should be inclusive and complementary. It thanked the submission of the draft treaty produced together with the Delegations of Brazil, Paraguay and Mexico to defend people with print impairments. It also pointed out that Ecuador had organized the first regional day in the Andes on access to reading to people with disabilities, together with the Latin-American Union of the Blind in June 2011. The meeting had facilitated the submission of a proposal for national initiative to solve the issue.
69. The Delegation of Guatemala, speaking on behalf of GRULAC, appreciated the informal consultations organized by the Secretariat. It was supportive of such informal approach that was beneficial to address concerns of all Member States. The Delegation was open to discuss initiatives that could help to find a solution for ensuring international protection of audiovisual performances while striking a balance on the issues of authorization and remuneration. With reference to limitations and exceptions, it stressed the need for immediate action of the Committee, in particular in adopting a comprehensive solution for persons who had hindrances in accessing normal formats. The legitimate aspirations of persons with visual impairments should be met.
70. The Delegation of Malawi supported the statement made by the Delegation of South Africa on behalf of the African Group. Malawi looked forward to the conclusion of the discussions of the important issues, namely, limitations and exceptions, protection of broadcasting organizations, and protection of audiovisual performances. The proposed treaty on the protection of persons with disabilities was very important and Malawi would take advantage of the treaty to include the provisions into its national legislation under review at that moment. It aligned itself with the proposal made by the African Group to consider a holistic approach for limitations and exceptions. The Delegation also considered important the discussions on the other two proposed treaties on the protection of broadcasting organizations and on the protection of the audiovisual performances with a view to their speedy conclusion.
71. The Delegation of Senegal recalled that in 1996, close to end of the Diplomatic Conference, Member States had discussed the protection of audiovisual performances. Much advancement had taken place after 1996 and at that time the Committee was again close to agree on a treaty. The Delegation was supportive of a quick conclusion of the process. Protecting the signals and creating a safe framework were real concerns for the Delegation. Concerning limitations and exceptions, everyone should be sensitive to such problems. The copyright system had always been based on a fair balance between the public interests and the interests of the rightholders. It supported the statement of the African Group.

72. The Delegation of Nepal observed that the Committee was since more than a decade discussing and exchanging views in relation to the protection for both broadcasting organizations and audiovisual performances. Several proposals and counterproposals had been put forward, papers and studies had been published and seminars had been organized to understand the issues in greater details. The Delegation hoped the Committee to take some positive step forward during the session. The Delegation believed that the vibrant growth of technology had placed tremendous pressure on the broadcasting organizations and their signals. Rampant signal piracy was certainly an issue that had to be addressed. The Rome Convention of 1961 could not solve all the problems raised by rapid technological developments in the area of broadcasting. The nature of the broadcast and the signals could never be addressed within domestic confines as it was an issue that could only be addressed by global undertaking. The new treaty should not affect public interest, access to information and consumer interest. Regarding the protection of audiovisual performances, the Delegation was supportive and believed that the central issue of the transfer of rights had to be spelled out in clear language, in such a way that the final solution could work out for both the audiovisual performers and the producers of movies. On the subject of copyright limitations and exceptions, the issue of visually impaired persons and other persons with print disabilities was ready to be concluded.
73. The Delegation of Colombia expressed its support to the statement of GRULAC. The adoption of a treaty on limitations and exceptions for the visually impaired was extremely important. In Colombia lived more than 1.134.085 visually impaired. The right of access to culture, education and information must be guaranteed to them in line with the Convention on the Rights of Persons with Disabilities. In relation to audiovisual performances, it agreed with the proposal of the new article 12 presented by the Delegation of Mexico, as that text was in line with the relevant national legislation. It hoped that a solution was found soon in order to achieve a treaty. Similarly the Delegation was ready to further discuss on the issue of broadcasting organizations.

#### **Statements of Inter-Governmental and Non-Governmental Organizations**

74. The representative of the African Intellectual Property Organization (ARIPO) informed that the mandate of ARIPO was expanded to include copyright and related rights, and a copyright officer had been hired to implement that mandate. Therefore it was going to be able to participate actively in the activities of the Committee. ARIPO was also very interested in the outcomes of the discussions on limitations and exceptions, protection of broadcasting organizations and audiovisual performances. A special thank was expressed to WIPO for organizing a meeting for heads of corporate offices of ARIPO Member States, held in May 2011, which had provided an opportunity to consider issues related to the mandate of copyright and related rights in the organization. The meeting was useful for the development of a clear strategy for the implementation of that important mandate. ARIPO had conducted a survey on the status of copyright and related rights protection in its Member States and was planning to play a pivotal role in the development of new strategies in the field. It also associated itself with the statement made by the Delegation of South Africa on behalf of the African Group, and particularly a holistic approach to limitations and exceptions.
75. The representative of European Visual Artists (EVA) shared the objective of facilitating access to intellectual property for persons with disabilities in a quick way. It was in the interest of all to do it in a way that did not conflict with interest of copyright holders. That required careful framing of exceptions and limitations to exclusive rights in national legislations. It further required collaborative efforts and dynamic solutions and innovative

solutions reflecting quickly advancing technology. There were already numerous examples of best practices in the publishing industry. Licensing solutions had proven more flexible and sustainable than purely legislative solutions. EVA accepted exceptions in favor of people with print disabilities as long as they were appropriately and narrowly framed to address the specific purpose that they were intended to serve. In addition, exceptions needed to be complemented by licensing solutions, particularly in respect of enabling cross-border file transfers. Any legal instrument should be therefore created within the existing framework or legal treaties, and in line with the principles of the three-step test in Article 9(2) of the Berne Convention.

76. The representative of the Ibero-Latin-American Federation of Performers (FILAIIE), reminded the Committee about the urgent need to adopt an international treaty that would adequately protect audiovisual performers and artists against all forms of piracy and hoped that a consensus could be reached on Article 12.
77. The representative of the World Blind Union (WBU) thanked the Committee for arriving at a convergence document on the proposals from the Delegations of Brazil, Ecuador, Paraguay, Mexico, Argentina, the African Group, the United States of America and the European Union, and expressed the hope that the Committee could make a recommendation to the WIPO General Assembly for a diplomatic conference in the foreseeable future. Any delay in a legally binding instrument would mean that many millions of persons would continue to face exclusion from access to information, culture, opportunities for study and work, and participation in their communities.
78. The representative of DAISY Consortium supported an agreement to address the needs of people with print disabilities through a binding instrument. That would ensure access to copyrighted works across borders in a sustainable and cost effective way. It envisioned a world where people with print disabilities had equal access to information and knowledge without delay or extra cost, including disaster situation eras. He decried the perception held by some Member States that licensing or advisory frameworks would adequately solve the needs of people with print disabilities, stating that licensing arrangements did not cover many vital publications and might also result in unacceptable delivery delays and generate additional costs as well. He urged the Delegations to rapidly reach an agreement on a binding legal framework needed to meet the obligations under the United Nations Convention on the Rights of Persons with Disabilities.
79. The representative of the Knowledge Ecology International, Inc. (KEI), endorsed the discussion of the Committee on copyright limitations and exceptions as those would ensure greater access to knowledge. He particularly noted the proposal by the Africa Group on copyright limitations and exceptions and expressed its disappointment on the proposal for a soft law or recommendation instead of a substantive treaty for people with print disabilities. That could result in a delay of a three or more-year period to discuss and evaluate whether or not there should be a work toward treaty for people with print disabilities.
80. The representative of the National Federation of the Blind (NFB) called on the SCCR to look at a potential treaty for the millions of visually impaired and blind people around the world as a fundamental human rights issue. The right to have access to information was the most important right blind people needed to break away from abject poverty, to participate in the world economy and to become true first class citizenship the representative noted. If a treaty was good enough for broadcasters, for performing artists; then a binding international norm on limitations and exceptions providing not only access to materials for visually impaired but also the liberty to share the materials across borders was certainly also good enough.



81. The representative of the European Blind Union (EBU) endorsed earlier statements calling for a treaty on access for print disabled people. The EBU rejected the proposal of the European Union on a soft law approach to address the issue of access for print disabled people and implored Group B to follow the directive of the European Parliament to work actively and positively in the framework of the SCCR for a binding legal norm based on the treaty proposal drafted by WBU.
82. The representative of the International Federation of Film Producers Association (FIAPF) reiterated the support of FIAPF for a multilateral process to resolve the issue of access to books by blind and visually impaired people. This was clearly a public interest matter which cut across the global community of nations and should be addressed in a manner that best guaranteed tangible improvements in access to knowledge and access to culture by people with print disability. He indicated that depending on whatever international legal approach was adopted any future discussions should focus on the equilibrium between copyright and exclusive rights on the one hand, and access by visually impaired people on the other hand. Any introduction of exceptions into national laws should rather be envisaged strictly within the parameters of the three steps test of the Berne Convention.
83. The representative of the International Video Federation (IVF) pledged his support for a pragmatic solution to increase the availability of books in specialized formats for print disabled persons in the developing world. He appreciated the dedication of the Committee to agree on a common text for an international instrument aimed at improving access to reading materials by print disabled persons.
84. The representative of the South African National Council for the Blind (SANCB) endorsed the statements made by other NGOs and members of the World Blind Union earlier in the session. SANCB believed time was now for the SCCR to conclude an agreement on an international instrument. On behalf of visually impaired in Africa and other developing countries, he urged Member States to conclude negotiations on a possible international instrument to provide access to blind and partially sighted persons without delay. He indicated that everyday the Committee delayed in taking a decision, it negatively impacted on the lives of blind and visually impaired people.
85. The representative of Centre for Internet and Society (CIS) expressed gratitude to Member States for their efforts to find a solution for limitations and exceptions for the visually impaired. The representative reminded the Committee that up-to-date there were over 147 signatories and 100 advocates to the UN Convention on the Rights of Persons with Disabilities (CRPD).
86. The representative of the International Publishers Association (IPA) expressed his support for a legal instrument for persons with print disability which built on the existing international framework. He indicated that any legal instrument so adopted should give publishers the privilege to directly make works available in any accessible format whether commercially or otherwise, nationally and internationally to persons with disability. The formats could be based on cross-border file transfers or on licensing arrangements and must be given priority over national copyright exceptions.
87. The representative of Beneficent Technology, Inc. (Benetech) was a strong supporter of the WBU's advocacy for a global treaty to help people with print disabilities. Citing the 'Bookshare Library Project' for the severely print disabled people as an example, he said that the project had over the last one year grown from serving 100,000 people to 140,000 people and its collection from 70,000 books to nearly 110,000 books in the United States and could therefore be replicated globally to remedy the global book famine given the right

legal backing. Benetech attributed the rapid increase in collection to the extensive voluntary support from publisher-partners in the United States of America, Canada, the European Union and India. Those publishers had given permission for the books to be distributed globally for the benefit of people with disability. All qualifying visually disabled in Australia, Denmark and Qatar now had free access to Bookshare international library with also hundreds of titles in Hindi, Tamil and Spanish. The Government of Qatar was also partnering to develop an Arabic language service.

88. The representative Library Copyright Alliance (LCA) expressed her appreciation to the SCCR for its continuous focus on limitations and exceptions for persons with print disabilities and hoped the consensus building would continue in future sessions. Regarding educational institutions, libraries and archives, she reiterated her support on the ongoing work of the United States of America, the European Union, Mexico, Ecuador, Paraguay, Brazil, the African Group and other Member States which had held a series of consultations to create a joint recommendation which included exceptions for people with reading disabilities. The positive progress made must lead towards a diplomatic conference for the adoption of an international treaty soon.
89. The representative of the International Federation of Library Associations (IFLA) was encouraged by the level of support of Member States for a possible treaty on limitations and exceptions for the visually impaired, libraries and archives and for education. The recognition of many Member States on the importance of exceptions was a positive sign. He noted that research and innovation depended on access to collections and materials which went beyond what was currently been offered by vendors. Only libraries and archives could provide such content and hence needed the exceptions and limitations to offer such services.
90. The representative of the Inclusive Planet Foundation (INCP) reiterated his support for a treaty to provide exceptions for persons with visual impairment and other reading disabled persons; stating that the licensing system incorporated by publishers had not been a helpful cater for the needs of persons with print disabilities. The representative bemoaned the difficulties in securing licenses. He said that the only practical solution was exceptions through a treaty that would empower persons with disabilities. The Trusted Intermediary system or any system which required prior approval of publishers for license for conversion of a protected work was too cumbersome.
91. The representative of the British Copyright Council (BCC) referring to the United Kingdom Act 2002, which among other exceptions included a provision for visually impaired people, said that existing laws and treaties had not produced the desired results due to the very fast-moving technology era. Many files were already offered following the publishers associations guidelines and other model licenses. He praised the work done by the WIPO TIGAR project using the networks of trusted intermediaries. He expressed the hope the Committee would soon agreed on a consensus text urging the delegations to take into account the experience of Member States which already had exceptions for the visually impaired. To BCC the voluntary route with flexible and tailored made licenses could keep pace with modern technology and the changing needs of visually impaired people.
92. The representative of the International Group of Scientific, Technical and Medical Publishers (STM) applauded the Delegations for the high level of support for the various issues on the agenda of the SCCR. The essential challenge before the SCCR was to create an environment that would solve the practical problem of widening access for the blind and visually impaired without creating disproportionate harm to rightholders of copyright protected works. Though licensing was often mischaracterized as a hindrance the actual fact was that it was the most efficient way of widening access to works. The

representative urged the SCCR to continue working to find a solution either based on a non-binding agreement or on an appropriate international instrument which could give effect to the previous four elements. Any framework agreed upon should be based on conditions which premised on sustainable solutions that create a fair balanced between national copyright laws system and efficient and swift trusted mechanism for international file transfer also based on the rightholder involvement and support.

93. The representative of Transatlantic Consumer Dialogue (TACD) was disappointed over the difficulties the SCCR had in making progress on the treaty for the visually impaired, something that he termed as “practicing filibusterism.” TACD expressed surprised at the position of some Delegations of Group B to obstruct any progress to agree upon a common text. That position taken by those Delegations was at variance with the decision of the European Parliament as majority of its members had been in favor of a binding legal treaty for the visually impaired. He questioned why the United States of America and the European Union had suggested a tortuous second-class treatment for persons in the developing countries while the respective national laws were far more flexible and far more generous. It was evident that voluntary arrangements for visually impaired had not worked and would not work so the only reason to push such alternative by those Member States was to gain time. The representative hoped the Committee would attach the same importance to the treaty as Member States were arguing for the broadcasting and audiovisual treaties.
94. The representative of the Latin American Union of the Blind (ULAC) informed the SCCR that ULAC had engaged in discussions with other organizations for the blind and Governments in the region on the subject of availability of reading materials in accessible format for the visually impaired. ULAC supported a binding instrument which would ensure that States were obliged to include in their national legislation minimal basis of exceptions. He urged the SCCR to agree on a treaty which gave all the flexibilities without restricting States to any kind of a particular organization or required previous authorization of any sort, as most countries either did not have organizations that met the model of trusted intermediaries or fell outside the proposed criteria.

#### **ADOPTION OF THE AGENDA OF THE TWENTY-SECOND SESSION (continuation)**

95. The Chair informed that the Committee would consider Item 3 of the agenda, which was the adoption of the agenda of the twenty-second session of the Committee. The Chair indicated that the discussions would include the proposals made by the Delegation of India regarding the contribution of the Committee to implement the Development Agenda as item 10. The Chair stated that the discussions would also include the request of the Delegation of France to change the agenda concerning Item 7 on limitations and exceptions.
96. The Delegation of France, speaking on behalf of Group B, stated that Group B wished to inverse the order of the agenda to begin with item 9 on audiovisual performances followed by item 8, on the protection of broadcasting organizations and, lastly, item 7 on limitations and exceptions. The Delegation indicated that the proposal from Group B was a compromise gesture recalling that there was no general agreement on how to implement the coordination mechanism for the Development Agenda contribution. If that proposal was accepted, the request by the Delegation of India could be accepted to include new item 10. The Delegation pointed out that such inclusion should not be seen as setting a precedent to establish permanently Item 10 in the agenda.

97. The Delegation of Slovenia, speaking on behalf of the Group of Central European and Baltic States, stated that the Committee referred to the decision of the General Assembly in 2010 contained in document WIPO/GA/39/7, Annex 2, to evaluate the mainstreaming of the Development Agenda recommendations in relevant WIPO bodies without the need to spend extensive time for elaborations. The Committee was only being called to fulfill an obligation arising under that document, but that obligation in no way should undermine the substantive work of any specific Committee. Against that background, it agreed to include agenda item 10.
98. The Delegation of India, speaking on behalf of the Development Agenda Group (DAG), thanked all the Regional Groups for their flexibility. In relation to the General Assembly decision, it did not provide for a specific agenda item on the issue but simply indicated that the relevant Committees were mandated to report to the General Assembly on how the Committees were mainstreaming the Development Agenda in the respective areas. Also, the Delegation objected the proposal to include the Development Agenda under other matters. That would not be acceptable to DAG as that might relegate the Development Agenda to a second class treatment. Finally, Members of other Committees had reached an agreement on the matter, namely the Standing Committee on Trademarks Industrial Designs and GIs (SCT), the Standing Committee on the Law of Patents (SCP) and finally, very recently, in the Patent Cooperation Treaty Working Group. In all those three bodies, a separate agenda item titled exactly as the DAG had proposed in the session of the SCCR.
99. The Delegation of France, speaking on behalf of Group B, thanked the Delegations of Slovenia and India for their flexibility. Having heard the point of view of Slovenia, the Delegation acknowledged that the recommendation of India on behalf of DAG to include Item 10 in the agenda would not detract the Committee from the substance of the discussion. Describing the recommendations as constructive elements, the Delegation repeated the proposal by Group B was on the basis of earlier consultations held with other regional coordinators. The idea therefore was to reverse the order of items 7, 8 and 9 so that the new work program would be preceded with item 9 on audiovisual performances, to be followed item 8 on the protection of broadcasting organizations and lastly Item 7 on limitations and exceptions. The Delegation also stated it had indicated Group B's possible flexibility on India's suggestion to include a new item 10 on the Development Agenda.
100. The Delegation of Slovenia, speaking on behalf of the Group of Central European and Baltic States, made clear that the inclusion of the extra agenda item would not hinder the substantive work of the Committee and agreed with the proposed agenda.
101. The Delegation of India thanked the Delegations of France and Slovenia for the flexibility demonstrated. Item 10 would be titled "Contribution of the SCCR to the implementation of the respective Development Agenda recommendations."
102. The Committee adopted the agenda of the meeting as document SCCR/22/1.

#### **LIMITATIONS AND EXCEPTIONS: PERSONS WITH PRINT AND OTHER READING DISABILITIES**

103. The Chair invited the Secretariat to discuss item 6 of the agenda regarding limitations and exceptions for persons with print and other reading disabilities.
104. The Delegation of Mexico reported back on the informal consultations among the various proponents with a view to having a legal instrument for the visually impaired. Disagreement still existed on some minor points. It asked for a short break to allow the

delegations engaged in those informal consultations to submit a document when proper substantive progress could be ensured on a solid basis.

105. The Delegation of Kenya asked whether the plenary would be suspended. The African Group was of the view that the plenary should continue so that the discussions in relation to the informal paper were not dealt with on the fringes of the SCCR.
106. The Delegation of the United States of America supported the views of the Delegation of Mexico. Enough work had been accomplished and it would be worth it to continue discussions at informal level.
107. The Delegation of the European Union stated that it would be reasonable to seek for a small additional time break of possibly one hour to have a useful basis for discussion.
108. The Delegation of Slovenia supported the proposal of the Delegation of Mexico.
109. The Delegation of Paraguay considered the Delegation of Mexico's request to be appropriate.
110. The Delegation of Venezuela (Bolivarian Republic of) proposed to ask whether any delegation opposed the Mexican proposal in order not to use up the requested hour in a pointless debate.
111. The Delegation of Brazil said that a group of countries had been informally meeting since February 2011 in order to undertake text-based discussions on the visually impaired exceptions and limitations. Discussions had evolved in a very positive atmosphere with a firm intent towards reaching a positive outcome at the current SCCR session.
112. The Delegation of the United States of America was pleased for having worked with the Delegations of Argentina, Brazil, Mexico, Ecuador, Paraguay, the European Union and the African Group in a series of informal meetings. Those Delegations were releasing informally for everyone in the SCCR a non-paper that was the result a long and arduous meeting process. It was Friday, June 17, 2011 and Delegations needed time to review that text during the next days of the session.
113. The Delegation of the European Union stated that it had made a commitment to find a solution to the problem of making available copyright works to visually impaired persons and persons with print disabilities. The non-paper presented with other delegations started with a preamble and continue with some substantive articles. Article A defined certain key concepts, such as accessible copy and authorized entity. An authorized entity needed to have the trust of both persons with print disabilities and the rightholders. The Delegation recognized that it was important to have market solutions available to make available accessible format copies. The concept of reasonable prices for developed countries as well as for developing countries could be useful in that respect. Article B basically dealt with the scope of the text and defined the beneficiary persons, namely persons who were blind, who had a visual impairment, a perceptual or a reading disability, such as dyslexia. Persons who were unable through physical disability to hold or manipulate a book, to move or to focus the eyes to the extent that would be normally acceptable for reading could also be beneficiaries of the instrument.
114. The Delegation of the United States of America described Article C as a careful compromise from the proposals that had been tabled before the SCCR. Article C(1), was largely drawn from the European Union's proposal and made the general statement that Member States or Contracting Parties should or shall establish in their national copyright

laws an exception or limitation for the benefit of persons with print disabilities. The structure of Article C(2) provided two specific mechanisms that a national legislation could follow. Those mechanisms were inspired by the World Blind Union Treaty but at the same time recognized the important role of authorized entities in providing accessible format copies to persons with print disabilities. Article C(2) also included a provision that allowed a visually impaired person to engage in self-help and to make her own accessible format copies. Article C(3) provided another option in case a national legislator did not want to use the formulas presented in Article C(2), namely an exception for persons with print disabilities in any other form as long as it followed the 3-step test under the Berne Convention. Article C(4) established a possibility for a Member State or a Contracting Party to choose to limit the operation of its exception for published works that were not otherwise obtainable within a reasonable time and at a reasonable price. That Article was absolutely in no way intended to be a prescription but just a possibility. Finally, Article C(5) provided that national laws could determine whether the exception or limitation should be subject to remuneration. The latter was a result of a careful crafting among the proponent countries in consultation with the African Group to find a language that expressed an idea in a simple, straightforward and non-prejudicial manner.

115. The Delegation of Mexico referred to Article D and the cross-border exchange of accessible format copies. It enshrined the possibility that when a copy was made on the basis of exceptions and limitations in one country, that copy might be exported or imported under an authorized entity auspices with other authorized entities ensuring that the copies met a genuine need for such material. That provision covered the essential concerns raised by the delegations of the European Union and the United States of America. Article E covered a very important issue that had been flagged during the informal negotiations as to permit the operation of an authorized entity on the beneficiary person's behalf to facilitate the production of accessible materials when the beneficiary person was not in a position to do so.
116. The Delegation of Brazil clarified that the proponents were continuing fruitful conversations on the path how to achieve an international instrument. Brazil favored a treaty.
117. The Delegation of the European Union stressed that the European Union and its 27 Member States were interested in results in the real world. A joint recommendation could bring effective and speedy solutions. It looked forward to continuing very fruitful conversations with all Delegations in that respect.
118. The Delegation of Argentina said that the basic agreement that had been achieved represented a significant step forward to facilitate access to works for the visually impaired. Argentina attached a great deal of importance to the design of a binding international instrument on limitations and exceptions for the visually impaired and other persons with reading disabilities. The Delegation had decided to co-sponsor the proposal made by Brazil, Ecuador, Paraguay, Mexico, the European Union and the United States.
119. The Delegation of the United States of America thanked all the proponents for the excellent dialogue and exchange of ideas. What so often happened at WIPO was that countries stated and restated their position with no actual negotiation. Negotiation was when countries came together and listened very carefully to what was possible for the other partner to achieve compromise and convergence and ultimately consensus. For the United States the goal was the same announced in December 2009, the formation of international legal norms for copyright exceptions for persons with print disabilities in order to produce, as the Delegation from the European Union had said, actual results on the ground for persons with print disabilities. It was no secret that the United States had

advocated the possibility of a two-step process in which the first step would be a joint recommendation on the path to a possible second step of binding international standards.

120. The Delegation of Paraguay stressed that the non-paper garnered the consensus of all the proponents with a view to designing an international instrument. It endorsed the statements made by the Argentinean and Brazilian Delegations to achieve an international treaty.
121. The Delegation of Ecuador believed that non-paper was an excellent basis to move forward with a treaty that addressed a lacuna in the current IP system regarding limitations and exceptions.
122. The Delegation of Mexico referred to the honest and open dialogue followed by all proponents to prepare the non-paper. Although the Delegation favored a treaty solution, it was also prepared to consider solutions which enabled the Committee to move forward with certainty and with a pragmatic approach.
123. The Delegation of Venezuela (Bolivarian Republic of) was pleased with the agreement reached by the various delegations that had worked on the non-paper. He reminded the Committee about the call made by the singer Stevie Wonder during the WIPO Assemblies of 2010 to finalize an agreement on exceptions for the visually impaired.
124. The Chair informed that the non-paper was available in other language versions. He invited the delegations to raise any questions or doubts on the document so that its content became clear for everyone.
125. The Delegation of India expressed its appreciation for the sincere efforts of the various delegations that had brought out a common non-paper on exceptions for the visually impaired. As to the definition of “authorized entity,” it asked whether the condition of having a “primary mission” excluded some organizations such as any university or educational institute which did not have a special office especially meant for making works available to the persons with print disabilities.
126. The Delegation of the United States of America explained that definition of “authorized entity” had changed and it was not required that the authorized entity had legal personality. The concept of a primary mission was not meant to be something so restrictive that it must be stated in the bylaws of an entity. The Delegation expressed its openness to find wording that might overcome that issue.
127. The Delegation of India proposed to replace the word “primary missions” by “activities.”
128. The Delegation of the United States of America proposed to meet informally to discuss the changes put forward by various delegations.
129. The Chair said that the original idea of opening up the floor for questions was to understand the document before moving to anything else.
130. The Delegation of South Africa clarified that there had been different levels of participation in the informal consultations. The African Group had participated as observer most of the time, and as a result it could not actually provide inputs to the non-paper. It asked what status the non-paper had and where the Committee was going with it. The African Group was looking forward to having an instrument, a binding instrument for exceptions and limitations for persons with print disabilities and the visually impaired.

131. The Chair reminded the Committee that it was the moment to clear up any doubts surrounding the document and not proceed to any other aspect until the Committee took cognizance of it. It asked whether any of the co-sponsors of the document could respond as to the nature or status of the document as requested by the Delegation of South Africa.
132. The Delegation of Mexico clarified that there were different points of view among the proponents and they did not want to prejudge the path to be taken. It was very important to know the opinion of Member States on the non-paper first.
133. The Delegation of the United States of America concurred with what the Delegation of Mexico had said to get on the substance of the non-paper and then finding a way forward under the Chair's guidance.
134. The Delegation of China thanked the proponents for their non-paper which was a big step forward in the Committee's discussion. The Chinese Delegation was open, flexible and willing to actively participate in discussions on the issue of exceptions and limitations for print and other reading disabilities.
135. The Delegation of Chile said that the non-paper was a positive step forward. Discussions on it had to be inclusive and developed in a participatory context. It asked why some provisions had alternative texts that stated "Member States/Contracting Parties should/shall."
136. The Delegation of the United States of America answered that the alternative text was intended to reflect the difference between a joint recommendation, which was the type of instrument proposed by the Delegation of the European Union, and a treaty, the type of instrument proposed by the Delegations of Mexico, Brazil, Ecuador, Paraguay and Argentina. The language choice should be consistent throughout the text but it recognized that there were some mistakes or typographical errors in that respect. It pointed out that Article D(1), in the fourth line, read "person with print disability," when throughout the rest it read "beneficiary person."
137. The Delegation of South Africa said that the African Group felt uncomfortable to work within the context of a paper with no certain status, and therefore the Group would be unable to contribute substantially to the discussions. It wanted to have the assurance from the proponents that the Group's concerns would be taken on board. It reminded the Committee that that day was Friday, and the next week the Committee would commence with another work program.
138. The Delegation of Brazil, on the same line as the intervention by the Delegation of the United States of America, pointed out that in Article F, second paragraph, the third line, it read: "Member States/Contracted Parties should," and it should read "Member States/Contracted Parties should/shall."
139. The Delegation of Venezuela (Bolivarian Republic of) did not understand why the African Group asked about the nature of the instrument when nobody knew if that would be a treaty or something else. That was why the Committee should move forward with the discussions. The document should be seen as a draft basic proposal.
140. The Delegation of South Africa wanted to have a working document in order to contribute substantially. The Group had been on listen mode and had not been able to contribute in previous informal consultations as experts were not present. The African Group was not blocking the negotiation. It stressed that it favored the treaty option.



141. The Delegation of Nigeria lent support to the Delegation of South Africa. The paper should turn into a working document.
142. The Delegation of Zambia supported the statement made the Delegation of South Africa on behalf of the African Group. It stressed that it was fully committed to the process and asked for clarity as to how to proceed with the document.
143. The Delegation of Senegal supported the statement made by the Delegation of South Africa. As the non-paper was not an official document, it was impossible to include all the comments of the African Group. The African Group was fully committed to contribute to the process and to reach a satisfactory result.
144. The Delegation of the United States of America proposed a meeting with the regional coordinators plus the proponents of the four proposals so as to explore a process or a method of establishing a process forward.
145. The Delegation of India sought clarity on the process. It also reiterated that it favored a legally binding treaty.
146. The Delegation of Barbados proposed that, in light of the views expressed by the African Group and in the interest of moving forward, the Chair ascertained whether the Committee was willing to adopt the non-paper as a formal working document. The Delegation could then support the position of the United States of America's Delegation.
147. The Delegation of the European Union was keen to hear comments and questions on the non-paper. All proponents had tried to bring substance to the room and therefore it could be useful to work on substance. The Delegation stood ready to provide further responses both here in the room as well as in informal or other consultations.
148. The Delegation of Mexico, on behalf of the Delegations of Argentina, Brazil and the United States of America, introduced the consensus document which intended to provide a basis for the discussions in the Standing Committee on limitations and exceptions to facilitate the access to persons with visual impairment and other reading disabilities to protected works. It invited delegations to examine the document carefully and to keep with the work schedule. The overall aim was to provide an instrument in favor of a significant group of persons in developed and developing countries with disabilities that allowed them to fully enjoy a number of human rights, namely regarding information, culture and access to education.
149. The Delegation of Ecuador stated that it had received instructions from capital to associate itself with the working document.
150. The Delegation of Australia announced that it would also co-sponsor the working document.
151. The Delegation of Paraguay said it would co-sponsor the document.
152. The Delegation of Colombia said that it was studying carefully the document and would indicate at a later stage whether or not it stood ready to cosponsor it.
153. The Delegation of the European Union, being a party to the four-party talks, stood ready for any further discussion on the basis of the document. It would announce at a later stage whether it would sponsor the document.

154. The Delegation of Chile requested to be added to the list of countries sponsoring the document.
155. The Delegation of Pakistan, on behalf of the Asian Group, asked whether the document would circulate as formal SCCR document.
156. The Chair clarified that the document code would be SCCR/22/15.
157. The Delegation of Canada expressed its gratitude for hard work of the proponents over the past few months to produce the non-paper. It thought it was a solid basis for providing a recommendation to the General Assembly.
158. The Delegation of Pakistan asked some questions on the substance of the document. As for Article A, the definition of “authorized entity” referred to “primary missions.” It was its opinion that that would only limit the scope of the document. It proposed to replace the word “primary missions” by “activities.” In paragraph 3 of the same definition, the Delegation was not sure with regard to what “trust” referred to and whether certain legal procedures were necessary to gain that trust. As to Article B(b), the Delegation proposed not to single out “dyslexia,” and instead make the scope of beneficiaries more broad by mentioning other disabilities.
159. The Chair proposed to study the document article by article in order to make rapid progress.
160. The Delegation of Russian Federation wished to associate itself with the document. The acceptance of such a document was a very important step forward in the Committee's work. The document could be recommended to the General Assembly in its present form, bearing in mind the comments made by the Delegation of Pakistan had said, as well as other delegations' comments.
161. The Delegation of Uruguay believed the document should become a binding treaty.
162. The Delegation of New Zealand thanked the proponents for their work to achieve a sensible and balanced solution. It asked the same question on Article A regarding “authorized entity” as the Delegation of Pakistan. In the third paragraph, it agreed that the concept of trust was subjective in nature and therefore might not be well suited as a normative requirement, unless there was a refined mechanism or criteria. The current draft might lead to an unnecessary uncertainty. It quoted the Director General Francis Gurry's speech in Australia earlier that year regarding the principle of comprehensiveness and coherence to provide adequate response through a combination of law, infrastructure, cultural change, institutional collaboration and better business models. That was why the work of the Stakeholders' Platform was also relevant in parallel with the development of new legal norms.
163. The Delegation of the European Union asked a question about the procedure envisaged by the Chair and suggested that the Committee took stock of the various points and allowed the co-drafters to discuss them internally to come back to the Plenary three days after. That was to say on Wednesday June 22, 2011.
164. The Chair said discussions would continue in an organized way in order to understand what the document represented. There were still many delegations that wanted to provide their comments.

165. The Delegation of Senegal pointed out that the Committee would run the risk of spending the whole day discussing the proposed document. If it was agreed to go through the document article by article, then it wished to seek clarification on the definition of “work” in Article A.
166. The Delegation of Japan expressed its appreciation for the efforts made by Argentina, Brazil, Ecuador, the European Union and its Member States, Mexico, Paraguay and the United States of America to prepare the concrete proposal. The improvement of access to knowledge for persons with print disabilities was very important and when discussing the provision on concrete limitations and exceptions in that respect, the Committee should bear in mind three points: First, any instrument should allow for certain flexibility in domestic implementation. Second, any instrument should not go beyond the scope of the three-step test. And third, any instrument should ensure to balance the protection of copyright with the promotion of the use of the work in consideration of the values and character of copyright because the purpose of copyright protection was to develop the culture.
167. The Delegation of Sudan said that with regard to Article A on the definition of “accessible copies,” that should include all kinds of formats, including Braille or other types of printing.
168. The Delegation of Brazil said that it would be a better idea for the co-sponsors to get all the questions and observations and then they would meet to discuss them.
169. The Delegation of Senegal pointed out that the French version of Article A referred to the equivalent of an “agreed entity” instead of “authorized entity.” It also expressed its concern about the “policies and procedures” mentioned in such definition. It would rather prefer replacing them by “rules and procedures.” Finally, the definition also referred to a nationwide network of organizations, the concept of which did not seem to be very clear. As to the definition of “reasonable price for developed countries,” it urged the Committee not to open the door to limitations and exceptions to allow people to make money out of the rightholders. The definition of “reasonable price for developing countries” lacked some coherence and consistency, particularly on how to reconcile the non-profit aspect with the marketing aspect. Finally, the very last paragraph read that copyright included “copyright and any relevant rights related to copyright.” Those terms were different and should not be confused.
170. The Delegation of South Africa gave few comments on the document. On the preamble, paragraph 2, it proposed to delete the word “obstacles” and replace it with “challenges.” It also proposed to strike out the word “prejudicial. In Paragraph 5, it proposed to replace the words “persons who are blind or who have limited vision” by “visually impaired persons or persons with print disabilities.” In Paragraph 7, it proposed to replace the word “desire” by the “need.” It also proposed to add a new paragraph that read: “Desiring to harmonize and enhance national laws on such limitations and exceptions through an international framework consistent with the Berne Convention in order to facilitate access to knowledge in copyrighted works by persons with disabilities.” In Article A, as pointed out by the Delegation of Senegal, it proposed the following definition. “work means a literally an artistic work protected by copyright, including any literary and artistic work in which copyright subsists. As to the definition on “authorized entity,” it concurred with the remark made by the Delegation of Pakistan on behalf of the Asian Group to substitute “primary missions” by “activities” in order not to limit the scope of the organizations or agencies that were involved. In the second paragraph, it proposed to replace the words “procedures and policies or rules” by “rules and procedures” as it believed some organizations did not necessary have policies. As for Article B, the Delegation was in agreement with the Asian Group and proposed to generalize the language and not mention one specific disability. It

proposed the deletion of dyslexia and the insertion of “disability or any other print disability.” The Delegation proposed an entire new article that read:

“Nature and Scope of Obligations”

1. Contracting parties shall adopt appropriate measures to implement the provisions of the Treaty.
2. Contracting Parties shall apply the Treaty transparently, taking into account the priorities and special needs of developing countries as well as the different levels of development of the Contracting Parties.
3. Contracting parties shall ensure the implementation of this Treaty allows for timely and effective exercise of actions covered, including expeditious procedures that are fair and equitable.]

As to Article F, it proposed a new title, namely “circumvention of technology measures.” The wording of that Article should be as follows:

“Member States/Contracting Parties shall/should ensure that beneficiaries of the exception provided by Article 4 have the means to enjoy the exceptions where technological protection measures have been applied to a work including when necessary the right to circumvent the technological protection measures so as to render the work accessible.

The right to circumvent technological protection measures shall be applied in such a manner as to provide safeguards against its abuse.”

171. The Delegation of Ecuador pointed out that the translation in Spanish in Article A related to “reasonable price in developing countries” appeared twice.
172. The Delegation of Morocco supported the statements made by the Delegations of Senegal and Pakistan. As to Article A, the French translation of “authorized entity” was wrong as it read “agreed entity” It also proposed to refer to non-profit entities or organizations that were designated by government agencies being responsible for certain things. The rest of the paragraphs were not a definition of “authorized entity” but rather a description of what an authorized entity should do. It suggested those three subparagraphs came after Article B as a kind of Article Bbis. It asked whether the reference to the bona fide nature was an assumption that the beneficiary acted in bad faith and then it had to be proven that he actually acted in good faith.
173. The Delegation of Japan asked for a detailed explanation of Article D as it was unclear what Member States should do under that Article.
174. The Delegation of Senegal asked whether Article G tried to regulate the implementation of contracts in the context of a multilateral instrument. According to the legal hierarchy, if somebody entered into a contract the provisions of which infringed the law, then the contract became null and void.
175. The Delegation of Japan sought clarification regarding Article E and Article F.
176. The Delegation of Switzerland stated that the document was a good basis for the Committee’s work. The translation into French of the definition of “work” seemed not to be identical to the English version. If copyright subsisted in a work it did not mean that it had fallen into the public domain. Also, the definition of work should make reference to the

Berne Convention and reference should be made to “protected work” instead of “work.” Finally, it sought clarification regarding Article F.

177. The Delegation of Venezuela (Bolivarian Republic of) supported the approach of the Delegation of European Union to collect all comments and questions and allow the proponents and the regional coordinators to meet informally to solve the difference face to face. It would be complicated to achieve any progress in the Plenary.
178. The Delegation of Russian Federation proposed a variation of Article A regarding the definition of “work,” namely that “work means any literary musical work within the meaning of the Berne Convention, whether published or otherwise made publicly available in any media, and protected by copyright.”
179. The Delegation of Morocco, as pointed out by the Senegalese Delegation, did not understand the purpose of Article G and proposed another wording for the beginning of the provision: “Without affecting the provisions of this instrument, nothing would prevent the Member States/Contracting Parties...”
180. The Delegation of Algeria proposed the amendment for Article D, fourth line, and replace “persons with print disabilities” by “beneficiary persons.” Article G should be deleted.
181. The Delegation of Brazil concurred with the suggestion made by the Delegation of Venezuela (Bolivarian Republic of) to take questions and gather with the interested countries to answer them.
182. The Delegation of the United States of America, in view of the thoughtful questions, comments and suggestions made by Member States, proposed to establish a mechanism for the sponsors of the consensus document to be able to spend some time together.
183. The Chair asked how much time would be needed.
184. The Delegation of the United States of America answered that at least several hours.
185. The Delegation of Venezuela (Bolivarian Republic of) asked the Chair to consider an actual meeting between the proponents and the African Group and to come on Wednesday June 22 to the Plenary.
186. The Delegation of Brazil considered that it was important to receive the input from the NGOs in the rooms regarding the document.
187. The Delegation of South Africa agreed with the proposal made by the Delegation of Brazil. As to the Delegation of Venezuela’s proposal, it clarified that the African Group had actually met with the proponents but its views had not been taken on board. The African Group stood ready to consult constructively prior to Wednesday to finish the working document.
188. The Delegation of Mexico supported the idea to carry on the dialogue in a smaller group with the proponents and any interested delegations, bearing in mind the views of the NGOs.
189. The Delegation of Pakistan supported the proposals made by the Delegations of Mexico and Brazil. It was also very pertinent to listen to the NGOs. There were two types of interventions. The first type was requests for clarification. The second type of

interventions included textual suggestions and it would be very unfair for the proponents to ask them to comment on those textual questions right then.

190. The Delegation of Switzerland stated that it would be interesting to get the viewpoint of NGOs and observers present in the room. It understood that the sponsors might find themselves involved in a lot of work to reply to questions as rapidly as possible but the whole process of exchanging views should be as open and transparent as possible as well.
191. The Delegation of Nigeria recalled that the process was not driven by anything outside the governmental process. Anything brought to the plenary meant to be part of an open dialogue.
192. The Chair clarified that the first step would be that the proponent examined the questions. The next step would be presented in two options. The first was that once the proponents knew the answers, they could come back to the Plenary and present them. The second option would to provide those answers in a small group.
193. The Delegation of the United States of America agreed with the second option as to the next steps. Like Brazil, the United States of America Delegation wanted to hear in plenary any comments, questions and concerns from the NGO communities so that the co-sponsors could meet to discuss them and also possibly answered them. The Delegation felt a special obligation to meet with the African Group distinctly to review their concerns because of their participation since February in the informal process. The proposal would be to meet in the afternoon of Monday June 20, 2011 and return to the Plenary on Wednesday, June 22 to continue discussing that issue.
194. The Delegation of South Africa said that the African Group had a regional coordination meeting early that afternoon of Monday, June 20, 2011, but the proponents could consider having consultations after 6 pm.
195. The Delegation of France reminded the Committee that there was a work program that included some room for flexibility. If the audiovisual performances item was discussed later on Monday, June 20, it might be better to come back to a more in-depth discussion on Wednesday, June 22 in the morning.
196. The Delegation of the United States of America proposed that, on Monday, June 20 afternoon some preliminary answers were given to the questions that had been raised. The proponents could meet with the African Group to bring additional concrete results on Wednesday, June 22.
197. The Delegation of Venezuela (Bolivarian Republic of) said that the experts of the African Group were present and they could meet with the proponents and reach an agreement. Meanwhile, delegations could carry on as normal.
198. The Delegation of the European Union said that, in order not to lose time in the plenary, the proponents should continue with the discussions at an informal level with the African Group and come back to the plenary on Wednesday, June 22.
199. The Delegation of South Africa was ready to meet and come back to the plenary after 3 pm on Monday, June 20. It advocated for a transparent process as requested by the Delegation of Switzerland. It reiterated its request to hear the views of the NGOs before lunchtime.

200. The Chair proposed that the proponents came back on Wednesday, June 22 with all the issues cleared up.
201. The Delegation of the United States of America said that an evening meeting with the African Group would be appropriate. It concurred with the suggestion made by the Delegation of the European Union and by France, on behalf of Group B.
202. The Delegation of Ecuador stated that it was very important to hear the civil society and recommended to listen to the NGOs.

### **Statements of Non-Governmental Organizations**

203. The representative of the World Blind Union (WBU) thanked the proponents of the original four proposals for their excellent work in converging the texts into a single document. Broadly speaking WBU was content that the new text fairly represented what had been put forward two years before in the original draft. WBU made itself available to those co-sponsors with whom it had an on-going very healthy relationship. Finally, he recalled that WBU's position was to negotiate a treaty document as the full solution to the shortage of books for visually impaired and print disabled people.
204. The representative of the International Publishers Association (IPA) congratulated the delegations for their efforts and hard work in achieving the non-paper. It was clear that they had focused very much on bridging the gaps in the areas where there were differences. From a publisher perspective, the first most important yardstick for the document was practicality and clarity. After all, IPA wanted access for all. The three-step test was a clear priority for rightholders, particularly for works that were made commercially available. A second aspect was the flexibility on the ground, such as national exceptions and international mechanisms that worked well. Thirdly, there was a need to clearly differentiate and be absolutely clear on what was actually regulated. That applied in particular to the distinction between national exceptions and the exporting exception. In the international exchange, a particular issue arose in relation to the scope of the document and the works to which it was applicable if the instrument became an annex to an existing treaty, particularly in relation to works that were not domestic. Some edits in the wording of that provisions could make the exception acceptable for the international publishing community.
205. The representative of Knowledge Ecology International (KEI) concurred with the earlier comments made by the Delegation of Pakistan, on behalf of the Asian Group, with reference to the definition of "authorized entity." First, he asked what meant the trust of copyright owners when it was not necessary to require the prior permission of said rightholders. That definition would create an unrealistically high expectation on the administrative burdens on those distributing the works, particularly the teachers, health workers, parents, employers, first responders and others who could be involved in the distribution of accessible works. He questioned the content of Article D(3) regarding the three-step test condition. There were several exceptions in the Berne Convention that were not subject to that test. Equally, there were some exceptions in the TRIPS Agreement such as the control of anti-competitive practices in Article 40 and the limitations on remedies in Article 44 that were not subject to the test. It proposed that some text was added in Article D(3) that read "without prejudice to the other exceptions to the exclusive rights of authors that are otherwise permitted by the Berne Convention or the TRIPS Agreement ...". Finally, he noted that the preamble made referenced the importance and flexibility of the three-step test for limitations and exceptions established in the Berne Convention and other international instruments but it did not acknowledge other important flexibilities.

206. The representative of the International Group of Scientific, Technical and Medical Publishers (STM) noted that the preeminence of allowing market-driven solutions was not entirely clear in the document. If a single file in fact was accessible to the end user, it should be made clear that such a solution was not affected by the recommendation. On the question of international file transfer, STM would prefer the cascade approach of not going either/or license or exception but rather a license where one is easily obtainable. He advocated for the harmonized solution brought by the guidelines of the WIPO Stakeholders' Platform. One way to either obtain or maintain trust would be to abide by guidelines set from time to time at international level.
207. The representative of the Chamber of Commerce and Industry of the Russian Federation (CCI RF) pointed out that Article G caused some concerns in relation to the relationship between contractual law at the national and international levels. In that regard, delegations should bear in mind the provisions of the Vienna Convention. She also asked about the wealth ethics of the document for the economy as a whole and the kind of incentives given to the private sector to comply with the international regulations under discussion.
208. The representative of the International Confederation of Music Publishers (ICMP) believed that the compatibility with existing international norms should be more clearly addressed in the document. It was not clear what was meant by Article C(3) regarding other limitations and the full compatibility with the three-step test. Article C(4) allowed Member States to apply the exceptions even to works which were otherwise available at a reasonable price and time in special formats when the purpose of any such instrument was to provide incentives so that accessible formats were indeed made available. Article C(4) and D(4) should provide that Member States shall or should limit exceptions and limitations to published works which in the applicable special format cannot be otherwise obtained within a reasonable time and a reasonable price. That would be consistent with Article F. As to Article C, she said that it rightly stressed the non-profit nature of the activity of authorized entities for the benefit of visually impaired, but the footnote then stated that co-operation and partnerships with other organizations including for-profit organizations shall be permitted. She asked what such partnership would do as it was important to avoid business models being developed at the back of exceptions or limitations. She agreed with IPA's views in relation to Article D and the need to recognize and include a role for rightholders. Finally, she said that it was not clear the reference made in the definitions to the Rome Convention and the WPPT.
209. The representative of the Centre for Internet and Society (CIS) supported strongly the treaty approach. He raised some concerns about the definition of work, the scope of beneficiaries and the system of trust as referred to in the definition of authorized entities. The latter would not work in developing Countries. The bona fide nature should be assumed and not proved. He expressed concerns about the way Article D on cross-border exchange actually interacted with Article E since there were provisions in Article D itself which referred to import. The role of authorized entities must not be viewed in abstract terms.
210. The representative of the Library Copyright Alliance (LCA) appreciated the positive progress made to develop a recommendation so that people with reading disabilities could enjoy equal access to copyrighted materials. As non-profit organizations acting as authorized entities, libraries could provide formatted copies for patrons with print disabilities as part of their primary mission. By maintaining policies and procedures for ensuring compliance with the definition of beneficiary persons, libraries could be recognized as authorized entities and would not need to seek permission from rightholders in order to create accessible copies of works already available to other patrons.



Implementation of policies and procedures to fulfill that requirement should not place an unnecessary burden on libraries with limited resources.

211. The representative of the International Federation of Reproduction Rights Organizations (IFFRO) was surprised that there was no reference to the joint work done by the rightholders and the users. In respect of the draft text, she proposed the following modifications: First, works to be made available under an exception in national legislation should apply only to works that were not made accessible by publishers or authors or their legitimate representatives. Second, the cross-border exchange of files should only be made with the express authorization or under a license with the publisher, author or their legitimate representative. Third, the text should clearly link the instrument to the Berne Convention and in particular to its Article 9(2) and the three-step test, which needed to be maintained as the general basis for the establishment of an exception in national legislation. Finally, the cross-border transfer of files, in addition to being made subject to some form of approval mechanism by rightholders or their legitimate representatives, must be limited to works lawfully published in the country where the entity performing the transfer was based; further re-exportation of files could not be allowed since it would conflict with the normal exploitation of the works and unreasonably prejudices the legitimate interest of the rightholders.
212. The representative of the Organization of Blind Persons of Brazil (ONCB) believed that all efforts were made to protect the fundamental right of access to culture. That right was already guaranteed in international instruments such as the UN Convention on the Rights of Persons with Disabilities. He said that delegations from Africa should understand that the proposal would contribute greatly to the development of blind people in all countries especially in the developing countries, including those in the African continent.
213. The representative of the International Federation of Library Associations and Institutions (IFLA), speaking also on behalf of the Electronic Information for Libraries (eIFL), pointed out that the definition in Article A on authorized entities actually matched with the work of libraries. As libraries were one of the key distributors of material serving print disabled persons in developing countries, he supported the suggestions of several Member States that “activities” was preferable to “primary missions” in Paragraph 1 of the definition of authorized entities. Paragraph 3 of the definition of authorized entities seemed superfluous as the entities referred in Paragraph 1 must be assumed to be trusted. He proposed to delete the word “prior” in paragraph 3 as it implied that some kind of post action licensing approval or certification might be required. As for Article C(5), he asked about the intent and effect of the provision. In principle, he did not agree that remuneration should be permitted for activities developed under that provision.
214. The representative of the International Video Federation (IVF) stressed the importance of ensuring the compatibility of the instrument with the existing international legal framework. He was of the view that the right to circumvent technological protection measures as proposed by the African Group would not meet that test.
215. The representative of the Electronic Frontier Foundation (EFF) joined the comments raised by KEI, CIS and IFLA in relation to the definition of “authorized entities.” She supported the suggestion of some Member States to replace the words “primary missions” by “activities,” as well as the comments made about the applicability of the three-step test and the full range of flexibilities available under existing international law. She asked for clarification in relation to Article F on technological protection measures and suggested that the national experiences of the impact of technological protection laws and nationally exceptions for visually impaired persons be taken into account.

216. The representative of the American Council of the Blind (ACB) hoped that the Committee would put in place a document that would enable a process to be set in motion to facilitate the access to works for people around the world who were blind, visually impaired or had other print or reading disabilities.

## **PROTECTION OF AUDIOVISUAL PERFORMANCES**

217. The Chair opened the floor on Agenda Item 7 on the protection of audiovisual performances.
218. The Delegation of Nigeria reported on the open-ended consultations on the protection of audiovisual performances held in Geneva on April 13 and 14, 2011. The consultations were chaired Mr. Ositadinma Anaedu from Nigeria. Summaries of the results of Regional Seminars held in the Asia Pacific, African and Latin-American regions during 2010 were presented. Presentations of the new proposals made by the Delegations of Brazil, India, Mexico and United States of America were given. Questions on the new proposals were asked by Member States and Non-Governmental Organizations. Answers and clarifications were similarly provided. During those consultations, the Delegations of India, Mexico, and the United States of America agreed to work towards developing a joint proposal with respect to Article 12 on transfer of rights for consideration by SCCR/22. That approach was welcomed by many delegations. The Delegation of Brazil also expressed its readiness to work on those comments and to work with interested delegations to find a common way forward. Participants underlined the importance of moving forward expeditiously towards conclusion of the negotiations to conclude a treaty on the protection of audiovisual performances. To that end, they recommended the SCCR/22 session to narrow the outstanding differences in order to enable the 2011 General Assembly to decide upon the convening of a Diplomatic Conference at the earliest possible opportunity.
219. The Delegation of Mexico informed the Committee that on the basis of the report which had been submitted by the Delegation of Nigeria, and the most recent agreements reached within the Committee, the Delegations of the United States of America, India and Mexico consulted over Article 12 on transfer of rights and made a lot of progress.
220. The Delegation of India confirmed the progress made by the Delegations of the United States of America, India and Mexico in bringing and drafting a framework for Article 12.
221. The Delegation of France, speaking on behalf of Group B, underlined the importance to make decisive progress towards a treaty on the protection of audiovisual performances. Group B was very much attached to achieving an effective international protection of audiovisual performers, along the lines of that granted to musicians in the framework of the WIPO Performances and Phonograms Treaty. As expressed by many other delegations during the consultations in April 2011, Group B believed that the 19 agreed Articles should not be reopened and it looked forward to just examining a joint proposal on Article 12. Group B hoped that significant progress could be made at that meeting in order to consider recommending the reconvening of a Diplomatic Conference on the protection of audiovisual performances.
222. The Delegation of Kenya, speaking on behalf of the African Group, thanked the Secretariat for convening the informal consultations on the protection of audiovisual performances. These consultations presented an opportunity for Member States to provide their inputs on the outstanding issues on the draft treaty for the protection of audiovisual performances. The African Group attached great importance to the treaty and reiterated its position about the issue of reopening the other 19 Articles. The African Group would prefer that the

SCCR/ 22 focus on the outstanding issue in relation to the transfer of rights. It was important to take cognizance of the different legal systems and practices existing in the Member States. The Group thanked the Delegations of the United States of America, India and Mexico for their continued efforts to try to get a consensus on Article 12 and looked forward the convening of a Diplomatic Conference.

223. The Delegation of Argentina stated it was most important to have an international instrument in the area of audiovisual performances to bring the protection of artists and performers up to date. The association of artists and performers of Argentina was a strong association well-recognized throughout Latin America and in other countries.
224. The Delegation the European Union found the presentations on the article relating to the transfer of rights made by the Delegations of India, Mexico and United States of America very useful and looked forward to discussing the merged proposal. The European Union believed that the international protection of audiovisual performances was an issue which could be considered largely overdue. The European Union stood committed to work consistently towards achieving a consensus to enable the 2011 General Assembly to decide on the convening of the Diplomatic Conference at the earliest possible opportunity.
225. The Delegation of Japan welcomed the three proposals put forward on the Committee, and appreciated the informal open-ended consultations held in April. The Delegation indicated that the tentative agreement on the 19 Articles at the Diplomatic Conference should be maintained and hoped that a timetable would be considered.
226. The Delegation of the Russian Federation stated that it supported the view that a treaty should be adopted as rapidly as possible. There was no need to reconsider the 19 Articles upon which an agreement had already been reached. The Committee should work on the outstanding issues to move to a Diplomatic Conference.
227. The Delegation of Brazil indicated that its country was not demander for a treaty on protection of audiovisual performances but it was interested in progressing in the negotiations. It would be important that all Member States and, in particular, demanders be committed to finding the necessary flexibility to take into account differences in national legislations. The Delegation was ready to show that flexibility. It considered that changes to the 10-year-old draft text of the treaty were necessary in light of the rapid technological evolution, the experience of the implementation and enforcement of the WIPO Performances and Phonogram Treaty and the way intellectual property had been dealt with at WIPO after the adoption of the Development Agenda. The Delegation was convinced that changes could prevent the new treaty from being born old and not gathering universal support.
228. The Delegation of Barbados supported the treaty on the protection of audiovisual performances and looked forward to see an agreement being reached on Article 12 to enable the convening of a Diplomatic Conference.
229. The Delegation of Colombia indicated that the Committee should focus on the issue unresolved at the Diplomatic Conference in 2000. The Delegation might support the proposal submitted by Mexico and waited for the consensual document prepared with the Delegations of India and the United States of America.
230. The Delegation of Senegal expressed support for all the work done in seeking to enhance the legal protection for artists and performers in the audiovisual sector which was overdue. Before the Diplomatic Conference held in 1996, there was a general wish to improve the legal situation of artists and performers in all spheres. Fifteen years have gone by since

then. The international community has repeatedly sought to find the answers for an appropriate protection for audiovisual performers. There was an agreement on 19 Articles and they should not be reopened. The Delegation stressed the need to focus the efforts of the Committee on the issue of the transfer of rights.

231. The Delegation of Australia continued to support the conclusion of a treaty for the protection of audiovisual performers. That work should be finalized without opening any of the 19 agreed Articles. If the issue regarding the transfer of rights was settled, the Committee should move towards finalizing the draft treaty without reopening any of the other issues. The Delegation welcomed the positive progress made during the consultations conducted in April and looked forward to considering any further proposal submitted by the Delegations of India, Mexico, and United States of America.
232. The Delegation of the United States of America appreciated the comments of the delegations that recognized the importance of maintaining the integrity of the 19 Articles and of reaching an appropriate conclusion on Article 12 relating to the transfer or consolidation of rights. The Delegation stated that the Delegations of India, Mexico, and United States of America were working diligently to try to reach a convergence text on Article 12.
233. The Delegation of Switzerland was in favor of a treaty for the protection of audiovisual and performers and hoped that an agreement on the provision relating to the transfer of rights could be reached during that session of the Committee. The 19 Articles should not be reopened.
234. The Delegation of Nigeria expressed support for the position of the African Group and looked forward to the outcome of the joint effort of the Delegations of India, Mexico, and the United States of America. It hoped an agreement could be reached during that session enabling the committee to make the recommendation to the General Assembly to move to a Diplomatic Conference rapidly.
235. The Delegation of China stated that its country has a legislation protecting performers and supported the conclusion of a treaty on the protection of audiovisual performances. The Delegation of China wished to contribute to enhance the protection of audiovisual performers and hoped that substantial results would be obtained during that session.
236. The Delegation of Iran (Islamic Republic of) thanked the Delegations of India, Mexico and United States of America for their proposals on Article 12 of the draft treaty and hoped that an agreement on that article could be reached during that session. The Delegation proposed for consideration the following wording of Article 12: "Once a performer has consented to incorporate his or her performance in an audiovisual fixation, the exclusive rights of authorization provided for in Article 6 to 11 of this treaty shall be considered to have been transferred to the producer of audiovisual work, unless the performer and producer agreed otherwise by way of contracts and equitable remuneration and other similar arrangements."
237. The Chair thanked the Delegations of India, Mexico and United States of America for their efforts, and invited the three Delegations to hold informal consultations followed by discussions with organizations of performers and producers.
238. The Delegation of Mexico indicated that the Delegations of Mexico, India and the United States of America had drafted a proposal for Article 12 and intended to show that proposal to representatives of the cinematographic industry and to consult with a number of

organizations from the film industry. The Delegation hoped the delegates would welcome that move.

### **Statements of Non-Governmental Organizations**

239. The representative of the International Federation of Actors (FIA) pointed out that audiovisual performers have been lacking protection at the international level for much more than 15 years. It was about time that audiovisual performers were fully recognized as right-holders. He was committed to consider meaningful provisions in the treaty relating to the consolidation of rights and remained convinced that changes to any of the 19 Articles provisionally approved at the end of the Diplomatic Conference in 2000 were not necessary. He thanked for their interest and their commitment all the delegations that have expressed support for a swift conclusion of the negotiations and encouraged the Committee to reach tangible progress. He remained at the full disposal of the Delegations of India, Mexico and the United States of America to provide as much expertise as possible to help to produce something meaningful.
240. The representative of Actors, Interpreting Artists Committee (CSAI) thanked the Delegations of India, Mexico and United States of America for their very hard work in search of a consensual solution to the remaining unsolved issue from the year 2000. The atmosphere was very positive, and the work was moving forward in a satisfactory way.
241. The representative of the International Federation of Musicians (FIM) indicated that FIM represented professional musicians and their organizations in more than 70 countries. In 1996, the WIPO Performances and Phonograms Treaty updated the rights of performers to take into account new technological developments. There has been some delay in the protection of audiovisual performances. That has caused unjustifiable harm to performers. In the year 2000, 19 Articles were adopted. There was now a broad consensus on those Articles within the Committee. This could be a very fine basis to proceed rapidly to the adoption of a fair and equitable treaty, which all artists and performers were calling for. There was an opportunity to correct an outrageous disparity in the kind of protection that has being offered to audiovisual performers and audio performers to ensure that all performers were appropriately protected, and that no rights were transferred without some kind of equitable step in order to compensate artists for the transfer of their rights. The document SCCR/22/2 recognized as legitimate the introduction into national legislation of a presumption of transfer of rights that would not be compensated for by appropriate remuneration paid to the performer. That was not acceptable. He believed a reasonable solution to the problem could be found by removing any reference to the transfer of rights. That was not absolutely necessary. He informed the delegations he stood at their disposal to give a more detailed explanation of his comments.
242. The representative of the International Video Federation (IVF) endorsed the statement made by the representative of the International Federation of Actors (FIA) and noted that other film producers associations would make a similar statement.
243. The representative of the Copyright Research Information Center (CRIC) stated that after the adoption of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, discussions took place on the protection of audiovisual performances. In the Diplomatic Conference in 2000, an agreement was reached on 19 Articles. He hoped that an agreement on Article 12 could be reached very soon. A concrete schedule for convening a Diplomatic Conference should be established.
244. The representative of the Ibero-Latin American Federation of Performers (FILAIÉ), speaking also on behalf of musical and audiovisual performers of Latin America, stated

that the 19 Articles should not be reopened, since a consensus on those Articles has been reached. However, Article 12 on the transfer of rights remained to be drafted. It was very important that the Delegations of India, Mexico and United States of America continue to work on it to establish a clear compensation for audiovisual performers.

245. The representative of the Association of European Performers' Organizations (AEPO-ARTIS) congratulated the Delegations of India, Mexico and United States of America which have worked on the very delicate issues of contractual relations between artists and producers. He expressed surprise at the use of terms such as the transfer or consolidation of rights since in the vast majority of countries, when there was a transfer of rights; it was without compensation or remuneration. Therefore, the transfer of rights certainly did not consolidate the rights of performers. He would be delighted to participate in the drafting of a new language regarding the transfer of rights and the contractual relations between performers and producers. One of the challenges which must be met by the new treaty, was to find a compensation for performers.

### **PROTECTION OF BROADCASTING ORGANIZATIONS**

246. The Chair opened discussions in relation to Agenda item 8 on the protection of broadcasting organizations.
247. The Delegation of Switzerland recalled the informal consultations on broadcasting organizations that had taken place in April 2011 with the participation of a number of technical experts. That meeting aimed at looking at those different technical questions for the updating of the protection provided to the broadcasting organizations in a traditional sense, following the signal-based approach. The Delegation noted that technical issues for updating the protection of broadcasting organizations had been presented by two different expert groups and Member States, and aimed at specifying the objectives, the scope and the object of protection for the draft treaty. During the consultations, new proposals from the Delegations of South Africa, Canada and Japan were also presented by their respective delegations. Questions arising from those new proposals were put forward by Member States and non-governmental organizations present at the informal consultation meeting. The Delegation stated that the presentations and the exchange of views demonstrated how broadcasting had changed over the past years and how technology had become sophisticated and its use was constantly changing. The Delegation stressed that the technology had shown that signal sharing was something of interest for all platforms and it was no longer for just traditional platforms such as satellite, cable and terrestrial broadcasting. The Delegation further noted that during the informal consultation, the Delegation was mandated to establish a non-paper, document SCCR/22/11, on the basis of the presentations made and exchange of views, which the Delegation intended to present at that session of the Standing Committee. The document had a number of elements that needed to be taken into account for a draft treaty.
248. The Delegation of Mexico stated that the participants had taken note that document SCCR/15/2 prepared in 2006 was not a practical document, as its format was not useful, and it became even more complicated when efforts were made to add new proposals to that document. The Delegation suggested a simple and user friendly document for the Standing Committee. In preparing the non-paper, the Delegation took into account document SCCR/15/2, observations that were made by technical experts who participated in the informal consultations and the mandate given by the General Assemblies of WIPO on the objectives, scope and the object of protection of the treaty for the broadcasting organizations, while maintaining a neutral standpoint from a technical point of view. document SCCR/22/11 covered the main elements that were discussed during the informal

consultations. However, the Delegation noted that the document did not include elements from the proposals made by the Delegation of Canada, which did provide an important contribution to broadcasters and their protection. The Delegation then requested the Delegation of Canada to provide more information in that area so as to incorporate it into the new document.

249. The Delegation of Canada explained that, as for the retransmission of free over the air signals, the most important element of the submission related to free over the air signals also known as unencrypted wireless signals by cable and satellite retransmitters. That issue was already part of the 2007 Delegation's proposal, which had elaborated on the June 2003 submission on the existence of a right of remuneration. Where a country had established a broadcasting regime that allowed the retransmission of unencrypted over the air signals through a remuneration regime, that should be provided on the condition that it allowed all content owners. The most important conditions were that the retransmitter did not retransmit the signal to another country including back to the country of origin of the signal. Owners of all content transmitted in broadcast should be entitled to protection in most cases. That would be an exclusive right and the ability to partially opt out of that right would be conditional on providing remuneration for all content. Canada was opting out of the provision on the retransmission right in the draft text that pertained to retransmissions within the country of the retransmitter. It noted that the proposal for opting out was not included as a formal option in the draft consolidated treaty and in the Chair's non-paper. The Delegation recalled requesting that it appeared in the future consolidated treaty text or in any report on outstanding issues. The Delegation also recalled its reiteration in its 2007 proposal relating to limitations and exceptions. The proposal relating to Article 17 would provide that parties to the treaty would be allowed to retain limitations and exceptions specifically allowed under the TRIPS Agreement. In other words, countries would be allowed to use the exceptions provided for under their own legislation but would be allowed to meet the three-step test. For other uses that would apply to broadcast and not content. As for the term of protection, the Delegation recognized there might be significant variations in the term of protection for broadcasts provided by different countries. The Delegation recommended a rule of the shorter term, also sometimes referred to as a rule of comparison of terms similar to that found in the Berne Convention. The Delegation did not believe a country which provided a relatively long term of protection should be required to give that long term to signals from a country which provided a shorter term. That would not affect the term of protection for any content protected by copyright which was being transmitted by the signal. That was consistent with the proposal the Delegation made in June 2007.
250. The Delegation of France, speaking on behalf of Group B, thanked the Secretariat for organizing the informal consultations last April. The Delegation looked forward to using it as a guide for the discussions, and believed that many of the important ideas put forward in that document warranted further consideration by the SCCR. Group B reiterated its conviction that the Standing Committee should move rapidly towards a treaty for the protection of broadcasting organizations, and was willing to remain committed to working with all Member States to find a solution enabling them to overcome the prevailing obstacles so as to ensure an adequate protection of broadcasters at the international level.
251. The Delegation of Switzerland gave an overview of document SCCR/22/11. It clarified that the main part of the document was to define certain elements to protect broadcasters against all types of piracy, as broadcasters in the traditional sense of the word were encountering problems with piracy. The objective of a draft treaty on the protection of broadcasting organizations was to ensure that broadcasting organizations could enjoy appropriate, efficient and effective legal protection against the unauthorized use of their broadcast signals. In an era of convergence, where the activity of broadcasting was no

longer confined to traditional platforms, the draft treaty should be based on a number of principles. A signal-based approach and a technologically neutral approach were needed in order to ensure adequate protection for broadcasting organizations on all platforms where the activity of broadcasting was carried out. It could also be possible to draw a distinction between platform of origin, on the one hand, and the platform of exploitation on the other hand. It was important that the new draft treaty on the protection of broadcasting organizations be seen as a complementary instrument to the Rome Convention. The object of protection, following a signal-based approach, was the protection of the broadcast itself. The Chair's informal paper was providing a list of main definitions that could be included in such a treaty without prejudice to the introduction of other definitions at a later stage. There were two alternatives for such definitions: One option was completely neutral from a technological point of view, and the other option was a more traditional approach which could take into account the technological developments. The definition of broadcasting organization was also included in that document. The signal-based approach required a definition of signal to be included in the treaty, and other definitions might be also included, such as the question of transmission or electronic communication means, which were directly linked to signal definition. As for the specific scope of the draft treaty, broadcasting organizations would be granted protection under copyright or related rights. The protection afforded by the draft treaty should apply both in relation to the visual and sound elements of programs. The rights should cover the authorization of the use of the broadcast subject to exceptions and limitations and public interest safeguards, which was a very important element highlighted during the consultations. The protection granted under the draft treaty could extend only in the transmission of programs by the broadcasting organizations and to pre-broadcast transmissions and not to work on other protected subject matter carried by other transmissions, nor to any material in the public domain. The object of protection, as foreseen under the provisions of the draft treaty, should not include mere retransmissions. The simultaneous and unchanged transmission of programs over computer networks by a broadcasting organizations should be regarded as if it were broadcasting and should be afforded the same protection under the draft treaty. Under the provisions of the draft treaty broadcasting organizations should enjoy the exclusive right to authorize a number of elements, such as communication of their programs to the public by any means, including making available to the public their programs in such a way that members of the public may access them from a place and at a time individually chosen by them. Public performance of programs for commercial advantage should also be covered, as well as the use of a pre-broadcast transmission intended for broadcasters. There was also a need to develop further the exceptions and limitations clearly, as well as to look at the protection of encryption and rights management information and the minimum term of protection.

252. The Delegation of South Africa, on behalf of the African Group, stated that there were no objections or consensus regarding the scope and of the objective of the treaty relating to the protection of broadcasting organizations. The observations seemed to suggest that there was an emerging consensus regarding the scope, object and objective of that treaty, and that Member States were ready to engage in text-based negotiations regarding that treaty. It marked a significant shift on that matter since 2007, and it commended the Secretariat for dealing with those initiatives, particularly the numerous information sessions, regional seminars, as well as the socioeconomic impact studies presented in the Committee in the previous sessions. The Delegation further expressed that those initiatives had unquestionably generated a better understanding of the complex issues pertaining to broadcasting signal piracy amongst Member States. Signal piracy was a way of living and at the moment there were no adequate legal instruments to deal with it. The treaty had to be flexible in providing flexible limitations and exceptions to ensure that the public value and principles relating to access to information and content of interests were upheld. The treaty had to be technologically neutral with converging requirements of



broadcasting and sufficiently broad to allow competition with existing treaties. Rights in the draft treaty were not necessarily new or additional to existing ones allocated by broadcasters, but had to address transnational or cross-border issues as contained in the Delegation's proposal. The primary objective of the new treaty was to provide a stable framework for the broadcasting organizations against illegal or unauthorized use of broadcast signals. For that purpose the Delegation proposed providing for the definition of broadcasting organizations which was a critical issue to define who was eligible for protection. The scope of the treaty had to be as mandated by the WIPO General Assembly, which meant that the treaty should protect broadcasting organizations against the illegal use of the broadcast signal in order to ensure that the treaty did not in any way compromise the right to freedom of expression or prevent use of content which was in the public domain and ensure that public interest rules were upheld. The object of protection was to be the broadcast. It was important to ensure that the definition was technologically neutral. A number of further definitions were proposed such as broadcasting, electronic communications and signal. It proposed the inclusion of mechanisms relating to enforcement and compliance as they related to broadcasting regulators as well as dispute resolution. Broadcasting was first and foremost in the public interest; hence it was highly regulated compared to any other ICT sector. The issue of public interest could not be solved by that treaty alone, as it was fundamentally a matter of national policy and legislation. Signal piracy occurred at two levels, namely, consumer and industry. In addressing the public interest, the Delegation pointed out that the minimum limitations and exceptions regime had to be consistent with Article 15 of the Rome Convention. Preliminary studies had shown that should the treaty be in the public interest, it would facilitate better access to information and further enhance the participation of least-developed countries and developing countries. Traditional broadcasting platforms were not ubiquitously available in those countries. The exclusion of some platforms from that treaty discouraged innovative methods for providing broadcasting services to the rural communities. The technological neutrality approach was important to ensure that the treaty was futuristic and comprehensive. With regard to definition, the Delegation pointed out that the definition of broadcasting in the Rome Convention was inconsistent and therefore there was a need for a technological definition that was consistent with a converging environment. The definitions provided by the International Telecommunications Union (ITU) also had to be looked at as definitions needed to be aligned and appropriate to copyright environment for the relevant work of that Committee. The report on the broadcast signal piracy seminar hosted by the Government of South Africa in Johannesburg contained in document SCCR/22/14 had made recommendations as a step to accelerate the work on the draft for the protection of broadcasting organizations. The first recommendation was that the 2007 WIPO General Assembly mandate relating to SCCR on broadcasting had to be revised taking into account advances in technologies. Given the emerging consensus on the scope, object and specific objectives of the treaty, a diplomatic conference for the adoption of the treaty had to be proposed for the next 2012 or 2013 biennium to the next General Assembly and the South Africa's proposal should form the basis of that treaty. In order to expedite the work of the SCCR, a work plan had to be developed to include dedicated sessions of the SCCR to discuss issues and to develop a basic proposal along with the diplomatic conference. It fully supported the proposals to get the elements of the draft treaty in order to drive the process forward.

253. The Delegation of the European Union was keen to see an improvement in the international protection of broadcasting organizations. It looked forward to discussing the non-paper presented by the Chair of the informal consultations. The Delegation expressed its readiness for a discussion in order to adopt the timetable on the future work program as it was concluded on the previous session of the SCCR in November 2010.

254. The Delegation of China thanked the Delegations of Mexico, India and Nigeria for their reports on the result and outcome of the regional seminars on the protection of broadcasting organizations in 2010, and the delegations of South Africa, Canada and Japan for their submissions on the draft treaty. The Delegation viewed the documents useful in making progress of the discussion of the subject and expressed regret for not being able to adopt the draft treaty earlier, as it had to reaffirm its position. It supported having further discussion on objective, scope and object of protection, as well as the need to address economic consequences of signal piracy.
255. The Delegation of New Zealand agreed with the outlined objective that any treaty should be based on a technology-neutral approach, a concept that New Zealand fully embraced when updating its Copyright Act in 2008. In relation to the broadcasters treaty, the Delegation encouraged the Committee to further explore what the concept of technological neutrality could mean. Intellectual property rights were an essential tool to promote innovation and creativity in society. However, if the policy settings were not right, copyright could stifle innovation by preventing competition and blocking access to content and producing an amount of follow-on activity. Any copyright framework should allow for the provision of specific incentives to create and innovate, while recognizing the importance of accessibility for follow-on creators to build upon as well as services to copyright encouraging access to knowledge and society furthering cultural objectives in order to optimize innovation countries needs to find the right balance between these objectives depending on domestic circumstances that balance might differ from country to country. The recently published independent report by Professor Hargreaves in the United Kingdom found that copyright was falling behind what was needed to create economic incentives for innovation and that was likely to be the case for many countries. To create the necessary incentives, copyright and other IP standards needed to be based on economic evidence. The economic analysis showed the optimum grade of protection differed among countries and could differ across time as countries moved through different stages of economic development. It highlighted the importance of incorporating evidence-based policy making in the development of any new norms, be it at the domestic or the international level. In the context of the SCCR principles such as the principle of evidence-based policy making along with other equally important principles such as taking a technology neutral approach, comprehensiveness, coherence and simplicity should guide the Committee when considering the scope of new copyright standards and the scope of new exceptions and limitations.
256. The Delegation of the United States of America mentioned that it had been actively involved in the deliberations before that Committee to update the provisions on broadcasting under the 1961 Rome Convention particularly in regard to the protection of broadcast signals from piracy.
257. The Delegation of Senegal thanked the Delegation of South Africa and all delegations that had put forward proposals on that very important issue. It stressed that it was generally known that broadcasters were among the largest users that have a protected repertoire of works in relation to copyright and related rights. Signal piracy was certainly a problem which had been killing the activity of broadcasters and damaging the interests of rights holders. Broadcasting was a very significant way of accessing information. Broadcasters had invested a great deal in producing their signals without getting a return on that investment. If there were to be a high quality and diversified content, it was important to ensure that a broadcasting organization which had been legally authorized to do so be given all of the legal protection that it needed to allow it to continue to pursue broadcasting. Technology had evolved and many broadcasters that broadcasted via the Internet needed protection to ensure that their investment could be secured and to obtain the legitimate compensation to which they were entitled to.

258. The Delegation of Japan believed that studies and regional seminars had brought significant progress and had played a significant role in further understanding the needs of broadcasting organizations. Discussions in the Committee had to be based on document SCCR/15/2 in order to promote discussions.
259. The Delegation of Nigeria stressed that the importance of achieving a treaty for the broadcasting organizations had been emphasized several times. For developing countries, broadcasting was the backbone of information, knowledge and dissemination of cultural information. Signal piracy was injurious to broadcasting investment and a threat to national security in most cases. Several steps had been taken by WIPO to conduct studies and organize regional seminars in collaboration with national governments. The outcomes of those studies and seminars had pointed to a convergence of thoughts and an agreement to move towards a treaty. A number of proposals had been put on the table and the Delegation commended the efforts and energy put into those proposals and thanked the delegations of Canada, Japan and South Africa. The outcome of the regional seminar for African countries and the non-paper developed after the informal consultations in April, along with two submissions from Canada and Japan formed a very strong basis for further discussions and to the adoption of the treaty for the protection of broadcasting organizations.
260. The Delegation of Iran (Islamic Republic of) felt that document SCCR/22/11 could constitute a good basis to move towards achieving a broadcaster's treaty, along with the three proposals presented by the Delegations from South Africa, Canada and Japan. The Delegation also said that the mandate given by the WIPO General Assembly 2007 on the objectives, specific scope and object of protection were already well considered and deliberated in the regional seminars and the WIPO information consultation meetings. The Delegation was of the opinion that the mandate of the General Assembly of 2007 covered the updating of the protection of the broadcasting organizations. It further mentioned that subject matter, rationale, justifications and reasons behind the protection of the broadcasting organization were similar to those in the Rome Convention of 1961. The Delegation stressed not to postpone the treaty for the broadcasters and there was also no necessity to seek any revision of the mandate of the General Assembly. The issue of the beneficiary of the webcasting organizations could be considered separately at a later stage.
261. The Delegation of India noted that the proposal for a treaty on the protection of broadcasting organizations had been under debate for more than ten years, and signal piracy was growing fast. India proposed a treaty for broadcasting organizations through signal-based approach, in the traditional sense. As mandated by the WIPO General Assembly in 2007, in order to contain the growth of signal piracy, India offered to play a co-operative, constructive and flexible role in reaching that goal. However, the scope of protection of signal-based approach should not go beyond the signal-based approach itself and should follow the Brussels Satellites Convention model. The non-paper elements for a draft treaty on the protection of broadcasting organizations, document SCCR/22/11, was nothing new but brought back all of the objectionable ingredients of the webcasting and simulcasting issues which were against the mandate of the General Assembly 2007. It supported the intervention made by the Delegation of Iran (Islamic Republic of) that there was no need to revisit the decision given by the General Assembly in 2007. It also emphasized the need for an article-by-article discussion over the non-paper that in order to get more clarification and comments from all Members.
262. The Delegation of Kenya saw the need to take into account the new technologies which offered new platforms for the dissemination of broadcast signals. The main concerns were

the issues of signal piracy and the need to protect broadcasting organizations against that. That was evident in the numerous examples that were given. As a follow-up to the regional meeting held for the African Group in Nigeria, the Government of South Africa had hosted a two-day consultative meeting to discuss matters as a follow-up. The consolidated position that had been indicated after the Abuja meeting and presented to the SCCR highlighted the main issues to be addressed which basically included the scope and objective of the protection. The Delegation of Kenya acknowledged the work of the SCCR in the previous sessions and the numerous contributions that had been made by the Member States in building a common understanding of the international protection of broadcasting organizations. It further stressed that, in line with the mandate of the SCCR as set out in the General Assembly, the protection should deal with the traditional broadcasting organizations which was in line with the draft treaty as modified by the South African proposal. It was important that the SCCR now focused its energy in working on the substantive issues that related to the specific objective and the specific scope of the instrument, taking into account the ever-changing technologies and to adopt a technology-neutral approach. The Delegation thanked the Chair of the informal sessions for the presentation of the non-paper which would provide a good basis for the discussion as well as the delegations from South Africa, Japan and Canada for their submissions.

263. The Delegation of Cameroon noted that radio broadcasts were very widely used, even in very remote parts of the country to disseminate information to people. But signal piracy was a very serious problem which in the long term, could compromise the very existence of the broadcasting organizations. It supported the interventions by the delegations of Senegal and Nigeria, and expressed its support for the South African proposal to adopt a treaty on the protection of broadcasting organizations. There was support for the establishment of a mechanism that would allow for striking the right balance between signal protections on the one hand and access to information of general interest on the other.
264. The Delegation of Malawi noted that the proposal by the Delegation of South Africa looked at the general and broad principles contained in the proposed treaty and contained the technology neutrality and the signal-based approach as mandated by the 2007 General Assembly, as well as the exceptions and limitations which were an issue of public interest. The proposed treaty which would provide a stable framework for the protection of broadcasting organizations and combat cross-border signal piracy.

#### **Statements of Inter-Governmental and Non-Governmental Organizations**

265. The representative of the Electronic Frontier Foundation (EFF) noted that protection of signals did not require the creation of intellectual property rights. Granting broadcasters and cablecasters intellectual property rights that applied independently of copyright in the programs being broadcast, together with legally enforced technological protection measures, raised concerns for access to public domain works and would add complexity to copyright clearance regimes for creators of podcasts and documentary films. She further stressed that it would interfere with consumers' ability to make in-home recordings permitted under international copyright law. Granting broadcasters and cablecasters exclusive rights to authorize retransmissions of broadcasts over the Internet would also harm competition and innovation by allowing broadcasters and cablecasters to control the types of devices that could receive transmissions and create new liability risks for Internet intermediaries for retransmission over the Internet. She appreciated the recent efforts to clarify the nature of the problem, including the most recent study by Professor Pickard, the paper on elements of the treaty by the Delegation of Switzerland and the new proposal from South Africa. However, EFF believed that they only highlighted the need for clearer thinking about an approach that was truly signal-based and did not create overlapping

rights in the works being transmitted. While EFF welcomed the statement in Paragraph 13 of the non-paper that protection should extend only to transmissions and not to the copyright protected works being transmitted or works in the public domain, she noted that that was inconsistent with other elements of the non-paper that required protection of the content being transmitted. For instance, Paragraph 10 provided that protection would be provided under copyright or related rights and Paragraph 11 would require standing protection to broadcasters of the visual and sound elements of the programs in which copyright owners already earned the copyright. A preferable model for addressing those issues was the narrower signal-based approach in the Brussels Satellite Convention and supported evidence-based policy making and norm setting. She recalled the 2004 open letter to WIPO from 20 webcasters and the 2007 open letter from over 1500 podcasters from around the world expressing concerns about a rights-based treaty.

266. The representative of the Centre for Internet Society (CIS) associated himself with the comments made by EFF and believed that the protection that might be afforded to broadcasters under existing international treaties, including Article 14 of the TRIPS Agreement were sufficient to safeguard the interests of broadcasters. While a technology neutral approach was useful, CIS believed that it did not mean that the differences between the different technologies should not be recognized. The capital costs and investments of traditional broadcasters was the primary reason for seeking signal-based protection for them. He said that any departure from a signal-based approach would require the consent of the General Assembly which had specifically requested for such an approach. Additionally, CIS also believed that Paragraph 16 of the WIPO Development Agenda which related to the preservation of the public domain would be endangered by a right given over webcast and retransmissions over the Internet. CIS supported the Delegations of South Africa and India and their strong pronouncement of public interests while looking at such a treaty. It further supported the Delegation of Canada for strongly emphasizing not to cover certain kinds of transmissions.
267. The representative of the Arab States Broadcasting Union (ASBU) expressed his wish to rapidly conclude the negotiations on the new instrument which had lasted more than ten years. ASBU was looking at the updating of the Rome Convention in light of economic, technological and social developments which the whole audiovisual sector had undergone over the past decade. As to the notion of what a broadcaster was, ASBU recalled how important the mission of the public broadcaster was in providing information, education and entertainment. A treaty would put an end to the illicit or unauthorized use of signals which was prejudicial to that role.
268. The representative of the National Association of Commercial Broadcasters in Japan (NAB-Japan) mentioned that following the recent earthquake in Japan, the Japanese were isolated from the outside world without telephone or Internet. The only means of getting information was first through radio, powered by electric battery, followed by television broadcasts once the electrical supply was recovered. That episode proved that broadcasting was by far the most fundamental and critical communication tool to get necessary information in people's lives, especially in moments of disaster. On the other hand, the damage caused by piracy mounted daily during the past decade and it had come to a point where the damage was threatening the existence of the broadcasters who were playing a vital role in society. A clear objective was to fight against piracy, the object of protection was the broadcast signal. He asked to move on to a Diplomatic Conference as early as possible.
269. The representative of the Copyright Research Information Center (CRIC) said that through broadcasting, people could get not only critical information but also various entertainment programs. Broadcasting had become indispensable in the lives and culture of people.

Piracy on broadcasting had done huge damage to broadcasting organizations, especially unauthorized use of broadcast signals. That issue had already been discussed for more than 12 years. During that period social circumstances had drastically changed and various new platforms for distribution of content had emerged. An international treaty was meant to be the minimum standard and not needed to be the maximum. Based on that principle, he said the Member States would be able to make a compromise at the Diplomatic Conference on the concrete provisions of the treaty.

270. The representative of the European Broadcasting Union (EBU) said the non-paper of the Chair was a good start and included only the absolute minimum. The objective was to provide the necessary rights to the broadcasters. The rights must include Internet use, as otherwise no broadcasting organization would support the continuation of that exercise. The non-paper did not include protection for webcasting organizations. The non-paper was had taken a new approach as it also incorporated the Rome Convention provisions. He said that the South African proposal made a crucial new step towards that new approach. It covered the essence of a draft on which they could construct the other elements in order to arrive at a full-blown treaty text. The representative felt that the steps proposed by the Delegation of South Africa and the timetable proposed by the Delegations of European Union and Japan would pave the way for the process.
271. The representative of the Electronic Information for Libraries (eIFL.net), on behalf of the International Federation of Library Associations and Institutions (IFLA), indicated that she believed that piracy on broadcast signals was already adequately dealt with under existing laws and treaties, and there was no reason to introduce a new international instrument. She did not see any change in the prospects for agreement on the objectives, specific scope and object of protection. At the same time, the Committee had examined the issue of limitations and exceptions which was an important part of the copyright system.
272. The representative of the Knowledge Ecology International, Inc. (KEI) opposed the work at WIPO on a new treaty for the protection of broadcasting organizations. To the extent that creative works were distributed through broadcasting networks, they were nearly always protected by copyright. Where the broadcast involved material in the public domain, it would be a mistake to give the broadcaster an intellectual property right merely for transmitting information. The advocates of a broadcasting treaty had not shown there was a problem in the area of piracy that could not be addressed by existing laws on copyright or theft of service. The largest concern was that the broadcasting treaty would be extended beyond the beneficiaries of the 1961 Rome Convention to services such as cable television, satellite television and radio for which users had to pay, and most importantly to services provided over the Internet. The treaty would provide up to 50 years of exclusive rights in content for which the broadcaster did not create and did not own the copyright. Among the advocates for the intellectual property-based broadcasting treaty were a number of giant media companies that packaged and aggregated copyright content into cable television channels and over pay services such as cable television or satellite television and radio. Document SCCR/22/11 was an effort to mitigate some of the concerns of the critics of the broadcasting treaty but it failed to clarify important issues. The non-paper also proposed to extend the treaty to simultaneous and unchanged transmission of its programs over computer networks by broadcasting organizations. That was the wrong paradigm for the Internet and unnecessary for any platform where copyright and theft of service laws provided balance as regards to user rights and adequate remedies against unauthorized uses.
273. The representative of the North American Broadcasters Association (NABA) said that the proposal of the Delegation of South Africa was a very useful illustration that a comprehensive, modern technologically neutral treaty could be achieved in clear and fairly

simple terms. The representative thanked WIPO for convening the informal consultation meeting in April which led to the production of document SCCR/22/11 as a non-paper by the Chair. That non-paper set out a very useful roadmap for a treaty that met the needs of broadcasting organizations in the current technological environment which had rendered the protection of the Rome Convention wholly inadequate. She agreed with the statement of the delegate of South Africa that text-based negotiations represented the best means to make progress on this long-standing matter of that Committee. She reiterated that there had been much debate about the term signal-based approach, as found in the 2007 mandate of the WIPO General Assembly but there had been no clear understanding of that term. She agreed with the interpretation contained in document SCCR/22/11 which viewed the term as distinguishing a broadcast signal from the underlying content and not a directive which excluded the granting of exclusive rights. Rights-based protection was the model that WIPO treaties had successfully utilized.

274. The representative of International Federation of Associations of Film Distributors (FIAD) said the information provided during the consultations in April demonstrated the importance of the financial contribution of broadcasters and in other sectors as well, such as sports. The distributors that FIAD represented felt it was so important to have protection for broadcasters in order to preserve the economic model. There was a need to protect programs and works when they were communicated to the public by broadcasters. That protection was independent of the rights held by the distributors.
275. The representative from the African Union of Broadcasters (AUB) thanked the Delegations of Canada, Japan and South Africa for their valuable contributions to the discussions. Those contributions had helped to move forward towards a definitive conclusion. African countries, especially those within the African Union and the developing countries in general, needed protection since they were frequently powerless against challenges that they faced. She viewed digitization as a danger and commended the Delegation of Senegal for having spoken for African broadcasters in particular. The representative also called for moving swiftly towards a Diplomatic Conference since the real problem had been solved and there were some minor bits of fine tuning that had to be done, which could be accomplished at the Diplomatic Conference.
276. The representative from the International Chamber of Commerce (ICC) mentioned that since 1997, there had been a number of documents and proposals for the draft treaty, such as those from South Africa and Canada. There had also been a number of studies carried out and of seminars organized in individual countries such as South Africa, Mexico, as well as informal consultations organized by WIPO. He pointed out that there had been many reasons and justifications to provide updated and improved protection the broadcasting organizations. The representative reiterated that a treaty was needed in that regard.
277. The representative of the Asia-Pacific Broadcasting Union (ABU) noted that a period of 14 years had passed since the very first WIPO World Symposium on Broadcasting held in Manila. That was followed by the completion of 21 sessions of the WIPO SCCR and 23 regional information meetings and roundtable discussions organized by WIPO in different regions of the world on the subject of broadcasting. Those meetings had provided government and experts with the opportunity to better understand the urgent needs for enhanced protection of the broadcasting organizations in the wake of rampant and increasing problems on signal piracy. She expressed regret that no consensus had ever been reached on a text for a Diplomatic Conference. While the 1996 WCT and WPPT had updated two of the beneficiaries of the Rome Convention, namely, the rights of authors as well as performers and producers of phonograms, the broadcasting organizations which were the third beneficiary of the Rome Convention still did not receive sufficient protection.

The broadcasting organizations had repeatedly presented actual cases of signal piracy from different parts of the world. Inadequate protection would enable others to freely profit from the broadcasters that had made huge technical investment in their signals. ABU maintained the position that the new treaty would not in any way harm the consumers position, affect the public domain content and stifle technology innovation, and the treaty would not in any way block fixations of transmissions and retransmissions over home or personal networks, since those issues were properly addressed by the proposed exceptions and limitations in the treaty.

278. The representative of the Third World Network (TWN) supported the statement made by KEI and EFF on a broadcasting treaty. The representative appealed to the Member States to adhere to the mandate given by the General Assembly in 2007. Any norm setting activities should be based on evidence, but TWN had still not seen any concrete evidence to establish the need for a new treaty. He also drew attention to the Development Agenda recommendations which clearly stated that any kind of norm-setting activities should take into consideration the differences in the development levels of member countries as well as to consider the public domain within WIPO normative processes. Any other approach would further compromise the availability of public domain information. The broad norm setting should also take into consideration the latter human rights framework.
279. The Delegation of South Africa sought clarification from the Delegation of Iran. One issue was the statement by the Delegation of Iran (Islamic Republic of) that the mandate of the General Assembly of 2007 did not need to be revised.
280. The Delegation of Iran (Islamic Republic of) clarified that a signal approach as mentioned in the mandate of the General Assembly in 2007 was not in contradiction with the protection of broadcasting organizations in the new platforms. What was to be clarified was the use of the word "traditional" for the broadcasting organization seemed incorrect. 'Traditional' and 'non-traditional' were both correct for the platforms themselves. There was only one kind of broadcasting organization. It stressed that what was a traditional versus a non-traditional broadcasting organization was not definable. However, it was possible to make a distinction between broadcasting organizations, cablecasting organizations and webcasting organizations. In accordance with the mandate of the General Assembly in 2007, the Standing Committee was for more than a decade working to protect broadcasting organizations in new platforms, and not to protect the non-broadcasting organizations. The beneficiary of the protection and the scope as given by the decision of the General Assembly was still a broadcasting organization. The Delegation also pointed out that the term signal itself had different meanings, as found to be different in the telecommunications, electronic and telephonic areas. The meaning of signal in the sphere of intellectual property was broadcast as in the Rome Convention, and the subject matter of protection in the Rome Convention was broadcast. A broadcasting organization transmitting its broadcast at the same time via the Internet or via new platforms do not converted itself into a webcasting organization.
281. The Delegation of India, while supporting the expert opinion of the differences between traditional platform and new platform by the Delegation of Iran, reiterated that there was no need to revisit and revise the mandate given by the General Assembly in 2007. That mandate given to the SCCR was the signal-based approach in a traditional sense. Traditional platforms meant, as explained by the Delegation of Iran, the broadcasting organizations and the cablecasting organizations, and not broadcasting over Internet or webcasting, simulcasting over Internet, podcasting or any other method of broadcasting.



## PROTECTION OF AUDIOVISUAL PERFORMANCES (continuation)

282. The Delegation of India announced that, as decided in the informal consultations on protection of audiovisual performances held in April 2011, the Delegations of India, Mexico and the United States of America had several discussions on the drafting the Article 12 on transfer of rights. They also consulted the organizations of producers and individual performers. The delegations have reached a consensus which as been submitted to the Chair and to the Secretariat.
283. The Delegation of the United States of America informed the Committee that concerning paragraph 1, the Delegations of India, Mexico, and the United States of America spent a great deal of time looking at different options and after careful consultations with the performers and the organizations representing film producers, the three Delegations came up with the following proposal: "The contracting parties may provide in its national law that once a performer has consented to the fixation of his or her performance in an audiovisual fixation, the exclusive rights of authorization provided for in Articles 7 to 11 of this Treaty shall be owned or exercised by the producer of such audiovisual fixation, subject to any contract to the contrary between the performer and the producer of the audiovisual fixation." The Delegation pointed out that the reference to Articles 6 to 11 has been modified to read a reference to Articles 7 to 11. The Delegations of India, Mexico and United States of America concluded that a reference to Article 6 was inappropriate since Article 6 related to the right of fixation that was given to the performer and that right would be exhausted in the circumstance where the performer had consented to the fixation. In consultation with the actor's organizations and the producers, the three Delegations decided that it was better to refer to Articles 7 to 11 of the treaty.
284. The Delegation of Mexico indicated that the second paragraph of the proposal on Article 12 was interesting because according to national legislation formalities might be set up so the performers could give consent in writing or through a dully authorized representative. The third paragraph contained a guarantee established in favor of performers. Independent of the transfer of the exclusive rights that was described in the first paragraph under national legislation or through any individual collective or other type of agreements, the performer or the artist could receive royalty or equitable remuneration for use of their performance. It pointed out that the three Delegations have decided to be flexible so that the Committee could come to an agreement on the protection of audiovisual performances.
285. The Delegation of the Russian Federation said it was extremely grateful to the Delegations of India, Mexico and the United States of America. That text was a very good proposal. It supported the wording and endorsed it. Such a wording satisfied the interests of the lawyers, the producers, the authors and the performers.
286. The Delegation of South Africa, speaking on behalf of the African Group, thanked the Delegations of India, Mexico and the United States of America for having drafted the proposal. It indicated that the Group would present its views on the proposal after having met.
287. The Delegation of Guatemala welcomed the proposal and thanked the Delegations of India, Mexico and the United States of America. That text would provide the Committee with the balance needed to give flexibility and to respect the legal traditions of the different Member States. It was a positive step forward to move constructively toward a treaty.
288. The Delegation of Australia welcomed the hard work and the flexibility of the Delegations of India, Mexico and the United States of America. The wording of the proposal correctly

balanced the rights of performers. Each country would be able to establish its own mechanism or rules to address that proposed obligation. The Delegation supported the wording of the consensus proposal.

289. The Delegation of Barbados thanked the Delegations of India, Mexico and the United States of America for their combined proposal and supported the wording of the proposal.
290. The Delegation of Brazil thanked the Delegations of India, Mexico and the United States of America for their proposal on Article 12 which contained three different options. It requested clarification on Article 4 relating to national treatment of the basic proposal of the Treaty.
291. The Delegation of Nigeria noted that the Committee had come a long way in dealing with the matter of Article 12 on transfer of rights. The Delegation believed that it could support the wording of the text proposed.
292. The Delegation of Senegal thanked the authors of the proposal as well as all of the interested stakeholders who had contributed to the process. That was an extremely important text which reflected all the concerns mentioned during the discussions. The very necessary balance between the interests of the producers and the artists had been struck.

#### **Statements of Non-Governmental Organizations**

293. The representative of the Association of European Performers' Organizations (AEPO-ARTIS) thanked the Delegations of India, Mexico and the United States of America on behalf of its members for the work they have carried out, especially for having included artists and interested stakeholders in negotiating the international instrument. He believed that the wording of the proposal was acceptable and did serve the interests of the artists.
294. The representative of the International Federation of Actors (FIA) indicated that he a professional actor from Australia speaking as the President of the Actors Equity Section and on behalf of all performers represented under the International Federation of Actors banner. In 1961 audiovisual performances were denied Intellectual Property rights. The Committee had an opportunity there to make a very good and fruitful history. The provision cosigned by the Delegations of India and Mexico and United States of America was fully backed by all producers in the room. It was an unprecedented outcome. He urged the Committee to reach an agreement on the outstanding issues left open at the end of the 2000 diplomatic conference and to seize that unique opportunity to put an end to the discrimination that audiovisual performers have enjoyed too long and move towards a Diplomatic Conference. He warmly thanked the Delegations of India, Mexico and the United States of America as well as all the trade organizations who helped to shape this compromise.
295. The representative of the Asociación Nacional de Interpretes (ANDI), on behalf of all of the Mexican artists and performers he represented, asked the Committee to make every possible effort in order to fill the void at an international level. It was necessary for producers and artists to work together so that the wisest solution could be found. If one sector wanted to ensure its own protection by affecting the protection of others, then the process would once again fail. In that Committee there were enough talent, enough negotiating creativity to ensure that the most wisest and balanced solution could be find. He urged all delegations to make their best efforts in order to move forward to the diplomatic conference.

296. The representative of the Ibero-Latin American Federation of Performers (FILAIE) thanked the Delegations of India, Mexico and the United States of America for their proposal. He believed it was important to move forward and was pleased to see the third paragraph concerning the right to remuneration for all performers.
297. The representative of the International Federation of Film Producers Associations (FIAPF) expressed the thanks of the International Federation of Film Producers Associations to the cosponsors of the proposal which demonstrated the spirit of compromise. Indeed the proposal represented the balance that organizations representing performers were looking for a number of years. It represented the consolidation of the rights that was needed. The proposed article 12 respected the different legal traditions existing in different countries. It was a good compromise to help the Committee move forward, enabling to resolve the issue of fairness in equitable remuneration and ensuring that performers exercised the rights that they deserved.
298. The representative of the Centre for Internet and Society (CIS) asked whether the concerns raised by the Delegation of Brazil in document SCCR/22/3 had been addressed and incorporated in the Consensus text.
299. The representative of the International Federation of Musicians (FIM) thanked the Delegations of India, Mexico and the United States of America for being able to come up with that fine document that represented the goals of all musical performers in this world. He indicated that its organization has been consulted and supported the proposal.
300. The Delegation of Ecuador asked if the equitable remuneration that was referred to in the third paragraph of Article 12 should be paid by the producer to the performer or by the user to the performer.
301. The representative of the International Video Federation (IVF) thanked the Delegations of India, Mexico and the United States of America for their very hard work. The International Video Federation and other groups of producers supported the protection at the international level of audiovisual performers and the issue to be solved was the protection of national mechanisms, the way countries operated in their film sectors. He believed that the agreement had come very close to achieving something that would protect national systems.

#### **PROTECTION OF AUDIOVISUAL PERFORMANCES (continuation)**

302. The Delegation of Morocco thanked the delegations who have drafted the compromised text which seemed to be acceptable to most of those who have spoken. It noted that in the proposal the words "Provided there is no contract stating the contrary" were unnecessary. The second paragraph mentioned "a Party." That might be a party to the instrument or a party to the contract. The second sentence should state that such consent should be in writing.
303. The Chair pointed out that the majority of the delegations have said they were in favor of the joint proposal made by the Delegations of India, Mexico and the United States of America. Three countries had some hesitation or recommendation. The Chair asked the delegations whether the Committee could recommend to the General Assembly that it convene a Diplomatic Conference on the protection of audiovisual performances.
304. The Delegation of the United States of America referred to the question raised by the representative of the Centre for Internet and Society (CIS). The consensus proposal put

forward by India, Mexico and the United States of America did not address some of the concerns and suggestions that had been raised by the Delegation of Brazil in a prior meeting of the Committee. Together perhaps with the Delegations of India and Mexico, the Delegation of the United States of America wished to have the opportunity to meet with the Delegation of Brazil to discuss some of the issues and concerns raised in prior meetings. After some further discussions on those points the Delegation might be in a better position to answer the question of the Chair.

305. The Delegation of Brazil indicated that the intervention of the Delegation of the United States of America preempted some of the observations it was going to make. The provision for Article 12 addressed its specific concerns relating to that article. Other points needed to be discussed in the context of those negotiations. The Committee should have a constructive dialogue regarding some of the essential points the Delegation has put forward during the consultations in April.
306. The Delegation of South Africa reaffirmed the need to consult with the African Group before being in a position to answer the question of the Chair.
307. The Delegation of the European Union thanked the Delegations of India, Mexico and the United States of America for their effort and for the very constructive proposal. The European Union and its Member States would need to consult on that issue and on the question of reconvening a diplomatic conference.
308. The Delegation of Mexico indicated that a meeting between the Delegations of India, Mexico, the United States of America and Brazil would be very productive to clear up all those doubts.

#### **LIMITATIONS AND EXCEPTIONS**

309. The Chair opened discussions in relation to item 9 of the agenda on limitations and exceptions. He recalled that an agreement on the agenda was needed. The morning session could be devoted to make progress on other items on the agenda, namely items 9 and 10, while informal consultations could take place on the side.
310. The Delegation of Mexico supported the suggestions of the Chair and informed the Committee that the Development Agenda Group wanted to make a statement on item 10.
311. The Delegation of Brazil, regarding item 10, informed that the representative of the Development Agenda Group was not present at that moment and wanted to confirm the opportunity to make the statement of the Group later.
312. The Delegation of South Africa stated that Item 10 did not concern only the Development Agenda Group.
313. The Delegation of Brazil welcomed the fact the Committee had a text on the table, which was co-sponsored by the Delegations of Australia, Brazil, Cuba, Mexico, Paraguay and the United States of America and supported by the European Union. Brazil had decided to table draft treaty on exceptions and limitations for persons with print disabilities guided by two assumptions. The first was that such international treaty must have been a useful instrument for persons with print disabilities and for that reason the proposal reflected the text originally elaborated by the World Blind Union. The second was that the international copyright regime was a mature system with more than 120 years of implementation, and it was feasible to craft precise and effective exceptions and limitation without depriving the

rights of authors. Those two assumptions remained the guiding principles underlying Brazil's position. The question on whether it should be a treaty or not should not have could be addressed at a later time. Emerging consensus was gathered on the protection of audiovisual performances and if a consensus prevailed a Diplomatic Conference should be reconvened to adopt a treaty. If the Committee succeeded in forging consensus around the texts on exceptions and limitations for persons with print disabilities, a Diplomatic Conference to adopt a treaty could convened.

314. The Delegation of South Africa, on behalf of the African Group, clarified that it had been discussing the issue of exceptions and limitations for persons with visual impairment and for persons with printed disabilities with a view of coming up with an instrument. After the presentation of the basic document a related negotiation must begin.
315. The Delegation of Norway thanked the submission of the consensus document on an international instrument on limitations and exceptions for persons with print disabilities, document SCCR/22/15, and informed that Norway wanted to join the group of Member States already sponsoring the document. The Delegation of Norway had been committed to a precise and focused work on limitations and exceptions for persons with print disabilities, and believed the document represented an important step forward in finding a solution to the pressing issue of access to works for the visually impaired.
316. The Chair clarified that item 9 referred to other limitations and exceptions different from the ones applying to persons with visual disabilities.
317. The Delegation of the United States of America wanted to explain to all Member States that the sponsors of the consensus document were going to meet to complete the formulation of their thinking in response to the many thoughtful comments and suggestions that had been offered by the African Group. The proponents of the consensus document had spent many hours meeting with the Africa Group informally, listening very carefully to the comments and suggestions, concerns and recommendations of the Africa Group. Because there were many countries that were sponsors of the consensus document, a certain amount of time to coordinate was required.
318. The Delegation of South Africa, on behalf of the African Group, believed that exceptions and limitations were one issue. Agenda item 6 was justified by the extra days that were given dedicated solely to exceptions and limitations for the visually impaired. Agenda item 9 was encompassing the visually impaired issue as well. With regard to the intervention made by the Delegation of the United States of America, it was concerned about the procedure. It was not agreeable to have a group of countries to decide which comments were going to be considered. It proposed to consult the Legal Counsel in that regard. The issue of ownership was very important; if the Committee was going to have a document, it must be endorsed by the whole membership not by a group of sponsors.
319. The Delegation of Brazil understood that item 9 was focused on limitations and exceptions for the visually impaired. There was going to be another opportunity to listen to further comments on the proposals. For instance, the African Group had tabled also a revised version of the previous one. So its understanding was that the current session would cover limitations exceptions and for the visually impaired; and the following session was going to focus on libraries and archives. That position was reflected in the timetable for discussions that was agreed in the previous meeting.
320. The Delegation of Mexico in view of the comments made by other delegations suggested concentrating the debate on exceptions and limitations. Pending items should be resolved.

It also underlined the importance of having informal consultations to address the comments made by the African Group.

321. The Delegation of the United States of America concurred with the comments of the Delegation of Brazil regarding what was included in agenda item 9. It also added that the sponsors of the consensus document were continuing to work in good faith and diligently to respond to the thoughtful suggestions from the Africa Group.
322. The Chair commented that the agenda included two different items on limitations and exceptions. One item referred specifically to limitations and exceptions for persons with reading and print disabilities and the other item referred to limitations and exceptions.
323. The Delegation of Brazil understood that at the current session there were three additional days dedicated exclusively to the issue of the visually impaired; and after those days the regular agenda of the normal sessions was going to be used. In conclusion in its view, item 9 was still focused on exceptions and limitations for visually impaired. That was reflected in the conclusion of the previous session of the SCCR. Nevertheless item 9 might well include discussion on other limitations and exceptions. The Committee could benefit from the presentation of the revised proposal on exceptions and limitations from the Africa Group.
324. The Delegation of Pakistan, on behalf of the Asian Group, said that its understanding in reading the conclusions of SCCR/21 session was exactly the same as of the Delegation of Brazil. There were three additional working days dedicated to exceptions and limitations for persons with print and other reading disabilities and item 9 was on limitations and exceptions inserted in the regular agenda item of the SCCR. The regular agenda item on limitations and exceptions was still focused on limitations and exceptions for persons with print and other reading disabilities. In any case, any other delegations willing to mention other kinds of limitations and exceptions could do it. The Delegation was still waiting for the comments of the co-sponsors on the comments made by the Member States in the plenary.
325. The Delegation of the United States of America, in addressing the comment of the Delegation of Pakistan, affirmed it was correct that a number of Member States offered a set of comments to the sponsors of the consensus document. It reiterated that they were working on that. It was a difficult and lengthy process to prepare complete responses.
326. The Delegation of South Africa, on behalf of the African Group, underlined that the Delegation of Pakistan said that it would be difficult to make progress if the Committee was not given the opportunity to discuss the comments made. It wanted to discuss the whole document because it was a formal working document of WIPO that should not have been limited to a certain number of countries. It asked if it was possible to consult with the Legal Counsel. The Delegation also responded to the United States of America that informal or bilateral consultations could not replace a formal procedure. There was a need to have clarity on the procedure. The text could not be finalized in an informal setting.
327. The Delegation of the United States of America admitted there was confusion. The Delegation of South Africa asked to start discussing the document in a formal setup. The Delegation thought that such discussion had already started. The Committee had already listened very carefully to concerns from Member States including from the African Group. As acknowledged by the delegate of South Africa, the Committee had substantive informal discussions following the initiation of formal discussions. That reflected the normal practice. It said the sponsors would be able to present the document reflecting the comments in the afternoon that day. It believed, as the Delegation of Brazil, that the whole

purpose of setting the current agenda was to dedicate three days to the issue of print disabilities, and ensure there was other time for the other exceptions and limitations which were quite important to the Africa Group.

328. The Delegation of South Africa, on behalf of the African Group, repeated that in its view the document was not discussed by the Committee. Presenting the document, receiving comments and going back to discuss among sponsors was different from discussing the document in the plenary. It posed the question of procedure to the Chair, not to the United States of America. Its impression was that since the African Group made substantial comments, those comments were going to be reflected on the document and, after that, all the comments were going to be discussed. The purpose of the informal consultations was not to finalize the text. Those concerns were not only of the African Group, but they were of the membership of the SCCR.
329. The Delegation of Zimbabwe stated that according to its knowledge there were initially four proposals on the issue of visually impaired persons. As a result of some informal consultations a document co-sponsored by certain delegations was presented. With regard to the issue of process, it appeared that the consensus document was an incubator where not everyone was allowed to attend or participate. In informal consultations that had been undertaken before the SCCR, the participation of the African Group was very minimum because of the limited sources and expertise. The Group had made few suggestions not to change but to enrich the text but nothing of what the Group had said was reflected in document SCCR/22/15. The Delegation suggested having those comments discussed in the plenary.
330. The Assistant Director General of WIPO reminded that the Committee had had five days of excellent discussion on the agenda with very good spirit of collaboration and progress. He wished to find a compromise in order to keep moving forward. Process was important and the only process that made sense was the process that could deliver results. The Delegation of United States of America had made the point that formal and informal processes had been used in the past. The African Group and the Delegation of Pakistan had made the same observation. A combination of formal and informal process had always helped to move forward on issues. The proponents had presented a document, and questions and comments had been made. It was not unreasonable for Member States to expect some responses to those questions and comments and it was not unreasonable for the proponents to want to discuss those questions and comments amongst them before responding to the plenary. Because of the sensitivity and the difficulty of the subject, he suggested breaking the meeting and giving the proponents some time to have their discussions. In addition, he suggested to stick to what it had been agreed in the SCCR/21 session. Agenda item 9 was limitations and exceptions.
331. The Delegation of the United States of America appreciated and supported the thoughtful suggestions of the Secretariat. It pointed out that some meetings were already scheduled to resolve other issues, both on limitations and exceptions and on the audiovisual treaty.
332. The Delegation of Brazil proposed to merge the two ideas of the United States of America and the Secretariat. As pointed out in the general statement, it would be a good idea to listen to further observations and suggestions to the consensus document. A presentation of the African proposal was also possible.
333. The Delegation of India agreed with the Delegation of Brazil to avoid any waste of time.
334. The Chair asked if the Committee wanted to discuss the issues of other limitations and exceptions and if the African Group was willing to introduce its proposal. Finally he wanted

to know if there were delegations willing to raise further comments on the consensus instrument.

335. The Delegation of South Africa, on behalf of the African Group, answered positively to all questions raised. It wanted to give priority and continuity to the print disability issue, but it was not discarding other exceptions and limitations. It also wanted to present the proposal of the African Group.
336. The Delegation of Kenya, on behalf of the African Group, presented the document SCCR/22/12. That was a draft treaty on exceptions and limitations for persons with disabilities, educational and research institutions, libraries and archives.. It was aware of the various issues that must have been dealt with in most of the countries of the region, especially in relation to access to teaching and reading materials. In fact, most of the countries had very limited exceptions and limitations and most of them seemed to be based on the UK Copyright Act of 1912. The proposal combined the three different issues. The part on definitions was contained on page 3 of the document which dealt with many challenging topics such accessible format, archives, database, disability, exclusive rights, libraries. The definitions were drafted in relation to international instruments like the Berne Convention, WCT, the Rome Convention, WPPT and the TRIPS agreement. It looked at beneficiaries in relation to the three parties which were mainly the persons with disabilities, educational and research institutions as well as libraries and archives. Article 4 regulated the scope of obligations in line with other international treaties. In relation to the exceptions and limitations to exclusive rights there were general exceptions and a number of specific ones that dealt with the personal use for the persons with print disabilities. Article 7 referred to the application to profit entities, it was in relation to ensuring that the works were accessible to the parties who were disadvantaged, and also regulated the criteria for determining what a reasonable availability was. In terms of remuneration, it did not believe it was necessary in relation to exceptions and limitations but in that particular case it tried to identify some circumstances whereby someone might use the provisions for commercial exploitation for those particular works. In terms of libraries and archives, the text addressed a number of issues, especially in relation to the purchase of works and the supply of works. The shrinking or rather the disappearance of the borders was particularly important. The issue of cross-border uses of the works especially in relation to libraries and archives received more prominence especially with relation to the digital copies. The proposal covered also the issues of private use, as well as issues relating to the preservation of materials especially by archives and libraries. Specific provisions related to educational and research institutions were also included. Furthermore there were the common provisions applicable across the three areas. It included a provision for the circumvention of technological protection measures to allow the effective applicability of the exceptions and limitations in the digital environment. Other general issues were related to contracts to ensure that people did not make contracts that would be contrary to the provisions of the instrument. In relation to importation and exportation of works, it included a provision to allow the use of those particular works across the borders.
337. The Delegation of the United States of America wondered about the process to be followed in term of considering that revised document. Because some Member States had raised some questions previously about the prior version of the treaty submitted by the African Group, it would have been very helpful if they could just walked through to see where the various comments and questions had been taken into account. After that, it hoped the Committee could actually have a follow-up question and answer round on that particular proposed instrument as was done about each of the other three proposed instruments. The Delegation wished to start by getting explanation of where all of the changes were inserted.



338. The Delegation of Brazil thanked the African Group for presenting the revised version of their proposal. The document had changed in many points. The following session of the SCCR would focus on the issue of libraries and it wanted to have a meaningful discussion to reach a result on that issue. It was important to start discussing even in informal meetings.
339. The Delegation of India appreciated the document presented by Africa. As per the Vienna Convention of the Law of Treaties of 1969, Section 2, Article 19 to 22 referred to the reservations to all international treaties. It wondered why the document of the African Group did not contain those reservations.
340. The Delegation of the United States of America wondered if it could have some clarification on what the procedure was going to be. It was interested in hearing some discussions on where the prior comments and changes had been incorporated in the document.
341. The Delegation of South Africa, on behalf of the African Group, appreciated the suggestion from the Delegation of Brazil to consider having informal consultations to expedite the work of the Committee in relation to the instrument for exceptions and limitations for libraries and archives. In response to the Delegations of United States and India, it had managed to retrieve all of the questions that were posed at the previous session. The proposed draft treaty took into consideration some of the comments and questions which were posed.
342. The Delegation of Kenya, speaking on behalf of the African Group, addressed the questions raised by the Delegation of United States of America. It had been asked about the definitions of copyright as to why the language of the Berne Convention or the WCT was not used. The solution proposed was something already established in other treaties. In relation to Article 5 dealing with exceptions and limitations, referring to the trusted intermediaries or authorized entities, it noted that Article 5 did not deal with the concept of trusted intermediaries because it was very difficult to address such a complex concept. Not very often they were organizations, individuals or groups which were dealing specifically for the people who were working on the issues of the visually impaired. The Group basically tried to modify Article 5 to capture the concept without any practical appreciation. In terms of educational and research institutions, the fact that there were limitations on the ability of educational and research institutions to make copies of works acquired legally without the authorization of the rightholders depended from the circumstance that the work was commercially available or not. Looking at educational and research institutions, those were public interest issues. In terms of libraries and archives, the issue of making diligent search to prior works to make offered copies was included in a separate article that was dealing with the offered works. On Article 13, some questions were raised regarding the requirement that the work be lawfully acquired before the circumvention of technical protection measures, the response was included under Article 18 that basically addressed areas whereby in the digital environment the work would have enjoyed the same exceptions and limitations. Article 18 dealt with the issue of circumvention of technical protection measures ensuring that the beneficiaries had means to enjoy the exceptions where technical protection measures had been applied to a work, including when necessary, the right to circumvent the technical protection measures as to make the work accessible. All issues must be looked at in the context of an instrument dealing with exceptions and limitations in terms of the relationship with other contracts, Article 19 was seeking to avoid having people making contracts deliberately negating the provisions of the treaty. The Delegation of the European Union had raised some questions. One question was whether the provisions of the treaty providing for minimum elements of flexibility to be included in the national copyright legislation systems were exceptions and or compulsory licenses. The Group wanted to establish minimum acceptable exceptions and limitations within the contracting parties, so it would not have

gone over and above in terms of exceptions and limitations. It was asked whether a Contracting Parties would be obliged to introduce such flexibilities in national legislation, and it was because that was considered a minimum standard that Member States had to implement them. Regarding the optional relation of exceptions and the three-step test in the Berne Convention, the Group was trying to look at what an acceptable minimum standard would have been. Regarding the nature and scope of obligations, contracting parties were to agree to undertake appropriate measures both practical and legal measures. Administrative measures were potentially needed. In regard to the relationship with other treaties the text reaffirmed that nothing in the treaty should negate from the obligations arising from other treaties such as the Berne Convention, the WPPT and the WCT. Article 4 provided for the possibility of commercial rental for profit entities if any of the three enumerated conditions were met.

343. The Delegation of Ecuador stressed the importance of dealing with the visually impaired persons issue. As recognized in the work plan adopted by the Chairman of the Committee, exceptions for libraries and archives should be discussed with great attention in the following session. The Delegation hoped that progress was going to be made in the informal consultations on the proposals by the African Group with to reach a consensus.
344. The Delegation of the Russian Federation raised a question to the African Group on how it saw that proposal within the context of the document referring to people with disabilities. The risk was to be discussing for an additional decade. It was necessary to clarify the relations between the African proposal and the proposals on the visually impaired persons.
345. The Delegation of South Africa, on behalf of the African Group, said there were processes and the one in relation to the print disabilities moved faster. It could see points of convergence between the African Group proposal and the proposal that had been put forward by the various sponsors of the consensus document. The consensus document had many points of convergence. The only areas whereby the Group was seeking further clarification in relation to the consensus document referred to the authorized entity and the issue of remuneration. It further emphasized that its proposal was used as a point of reference for the discussions with the sponsors of the consensus document.
346. The Delegation of Uruguay stressed the importance of the issues before the Committee. It believed it was urgent to find a solution to the problems of visually impaired persons. Exceptions and limitations both for libraries and archives and other purposes were also important and the Committee had agreed to discuss them in details in following sessions. It supported what the Delegation of Brazil had said about continuing to discuss libraries and education between the meetings but it was important to concentrate on persons with visual disabilities at the current meeting.
347. The Delegation of Sudan thanked the African Group for having prepared the document. The document did not deal with all exceptions and limitations. The question was how the Committee could deal with all the exceptions and limitations to respond to the needs of the impaired and disabled persons.
348. The Delegation of South Africa, on behalf of the African Group, in order to facilitate the discussion requested the Secretariat to prepare a composite text with all of the comments made by Member States on the consensus document.
349. The Delegation of the United States of America recognized that libraries and archives were central to the knowledge system. Libraries and archives advanced knowledge by providing access to works that comprised the knowledge, cultural heritage and collective memories of the nations. They were central to the knowledge economy of the 21st Century

supporting research learning, innovation and creative activity. They facilitated access to diverse collections and to information and services to the general public, including disadvantaged communities and vulnerable members of the society. Throughout the world, national copyright laws had recognized the special role of libraries and archives in achieving the systems goals of encouraging creativity, innovation and learning. As it learned from the comprehensive study carried out by Professor Kenneth Crews prepared on behalf of the Committee, 128 of the 149 countries surveyed had at least one statutory library exception that specifically permitted libraries to make copies of copyrighted works under certain circumstances. Those exceptions and limitations supported private research, study preservation, replacement of materials and access to materials including document supply and interlibrary lending in the United States of America. The primary library exception in Section 108 of the Copyright Act permitted libraries to make copies for preservation and replacement to permit researchers and other users. Other exceptions and limitations in the Copyright Act supported library services such as the American doctrine of fair use. While limitations and exceptions must be tailored to address the needs of an individual country, it did believe there were some general objectives and principles on which Member States could agree. It noted with interest the statement on principles of copyright exceptions and limitations for libraries and archives prepared by the Electronic Information for Libraries, the International Federation of Library Association and Institutions and the Library Copyright Alliance which was distributed at the SCCR/18. In looking at objectives and principles on which Member States could have agreed, the Committee might consider to recognize the importance of limitations and exceptions for libraries and archives and encourage all Member States to adopt them. It could recognize that limitations and exceptions could and should enable libraries and archives to carry out the public service role of preserving works. In that regard exceptions could allow libraries and archives to make copies of published and unpublished works for preservation and protection under certain circumstances; similarly, they might let libraries and archives to preserve materials in media and formats at the risk of deterioration damage or loss which might include the migration of content from obsolete storage formats. Exceptions could establish the framework enabling libraries and archives to supply copies of certain materials to researchers and other users directly or through intermediary libraries. In addition copyright laws might recognize limitations on the liability of libraries and archives and their employees acting in good faith or believing or having reasonable grounds to believe that they have acted in accordance with the copyright law. Adequate safeguards should be put in place to ensure accountability with those provisions. The Delegation looked forward to exploring in greater depth the role of library and archive exceptions in meeting the goals of the copyright system.

350. The Delegation of South Africa, on behalf of the African Group, indicated that it did not have any records of the comments and questions raised by the delegations.
351. The Delegation of the United States of America said that the Committee had a record of the comments made. A written record of those comments had been provided to all delegates. It had very carefully studied the written transcript of those comments.
352. The Delegation of South Africa, on behalf of the African Group, reminded that the Group proposed that the non-paper be presented as a working document. It wondered what the overall objective of that consensus document was. If the overall objective was to have an instrument for the visually impaired, the document should be discussed and the whole membership should have the ownership of that document.
353. The Delegation of Pakistan, on behalf of the Asian Group, requested for the sake of transparency that the transcript of the comments made on the document presented by the co-sponsors be circulated to all Member States.

354. The Delegation of Brazil stated that, on the basis of the observations and questions made by Member States in the plenary on Monday, June 20, the co-sponsors of the consensus instrument had made some changes in their text. It asked the Secretariat to substitute the new version of the proposal.
355. The Delegation of Norway announced that it would to join the group of Member States already sponsoring the document.
356. The Delegation of the European Union was in a position to confirm that it would also sponsor the consensus document. This was under the understanding that that was part of a total package, in which the Committee needed to reach an agreement. The other important part of the package was to have an agreement in the form of an instrument and the process should lead to a real implementation and practical application on the ground of the principles established in the consensus document. It recalled that the EU and its Member States had advocated a joint recommendation as a means to producing speedy and effective results on the ground. However, the Delegation did not exclude a two-step approach to that matter, which would be a first step allowing to review the effective results of a joint recommendation before considering the call for Diplomatic Conference as a possible second step.
357. The Delegation of Venezuela (Bolivarian Republic of) asked whether NGOs had something else to say.
358. The Delegation of the United States of America clarified that the Russian Federation had stated that it would also join as a co-sponsor of the consensus document. The co-sponsors also wished to continue with the discussions initiated on Monday, June 20.
359. The Delegation of Nigeria asked whether the Committee wanted to change the negotiation pattern in WIPO. Some delegations could not discuss a proposal and agree with it, and superimpose it on everybody else. It did not agree with the idea of sponsorship of the consensus document and negotiation in isolation.
360. The Delegation of the United States of America said that the co-sponsors of the document proposed a process forward that would address the concerns raised by the distinguished Delegation of South Africa on behalf of the Africa Group, and Nigeria. There were five proposals on the table. One proposal came from Brazil, Ecuador and Paraguay, joined by Mexico and Argentina. A second proposal was from the United States of America. A third proposal came from the European Union. A fourth proposal came from the African Group. Finally, the fifth proposal came from Argentina, Australia, Brazil, Chile, Ecuador, Mexico, Norway, Paraguay, the European Union, the Russian Federation and the United States of America. The United States' understanding was that the Africa Group and other Member States had asked the sponsors of the document to thoroughly consider the comments that had been made in the plenary session, to prepare answers, and to take where possible those comments and suggestions on board. The co-sponsors had been doing that in good faith and diligent work.
361. The Delegation of Venezuela (Bolivarian Republic of) supported the Chair's approach and sought clarification on the position of the Nigerian Delegation.
362. The Delegation of South Africa clarified that the Group just wanted to discuss the document posted on a screen.

363. The Delegation of Nigeria noted that the co-sponsors were meeting by themselves, agreeing by themselves, discussing proposals by others by themselves, and then presenting a consensus document for endorsement for everybody. That was an isolationist method of building momentum of intimidation. In that case, the Committee could not talk about a consensus document because the due process of negotiation had not taken place. Many did not like the word "bracket," but that was really the method of negotiation.
364. The Delegation of the United States of America wished to present responses to the comments made in the plenary.
365. The Delegation of Brazil thought that there was some misunderstanding regarding the way to proceed with the work. The co-sponsors just wanted to respond to the questions and observations made to the document on Monday in the plenary. It did not preclude the possibility that some open-ended consultations could start after then.
366. The Delegation of the United States of America concurred with the clarification by the Delegation of Brazil. The group of co-sponsors just wanted to honor the request to answer the questions raised and comments made the Monday before. Many of the suggestions concerning the preamble from members of the Committee were more than acceptable to members of the sponsoring group. In Article A, in the definition of "work," the Africa Group had suggested a new definition and the Russian Federation had also proposed some improvement in the wording. Switzerland had indicated that the definition should be rewritten, and expressed a concern that the French translation was not suitable. The co-sponsors of the document would propose the revised definition of work: "Work means a protected work within the meaning of the Berne Convention, whether published or otherwise made publicly available in any media." The sponsors did not have any changes in the definition of an "accessible format copy." As to the definition of "authorized entity," the sponsors noted the concerns raised by the Asian group on the word "missions," but no conclusion had been achieved yet on how to improve that. Note was taken about the suggestion by India that "activities" might be a better word.
367. The Delegation of Nigeria requested to have the document showed on a screen.
368. The Chair clarified that the explanation referred to document SCCR/22/15. That document had already been circulated to all delegations. Only amendments to that document were now pending. The Delegation of the United States of America could continue while in ten minutes the revised document would be available for everyone.
369. The Delegation of the United States of America also referred to the concerns about the term "policies" used in the definition of authorized entities and that the African Group's opinion that that word was too strict and should be change by the word "rules." That was acceptable by the co-sponsors. As to the third and fourth paragraphs of the definition of authorized entity, the co-sponsors noted the concerns expressed by several delegations, including the Asian group, on the concept of trust. The sponsors believed that trust really captured best and most moderately the concept to achieve. On the fourth paragraph, the co-sponsors had tried to address the concerns of the African Group but had not had enough time to achieve any final formulation. The end of paragraph of article A contained a new definition of Member State. And finally, for consistency, and at the suggestion of some delegations, the co-sponsors had added a reference to the WCT, into the final paragraph of Article A.

370. The Delegation of Ecuador stated that Article B had been revised taking into account the comments by the Asian and African Groups regarding the deletion of dyslexia, and the insertion of any other print disability.
371. The Delegation of Brazil noted that the African Group had proposed a clause on the nature and scope of the instrument. The co-sponsors of the instrument had reached consensus on the content of an instrument on exceptions and limitations for the benefit of persons with print disabilities. There was no consensus yet on the nature of this instrument. The language proposed by the African Group was typical of a treaty, and the co-sponsors would not be prepared to incorporate that language. Article C(2) specified on which terms exceptions and limitations might be implemented in national laws. There were two possibilities. One was that authorized entities might exercise exceptions and limitations to the rights of reproduction, distribution and making available. In other words, an authorized entity might make an accessible format copy, distribute or make available to a beneficiary person, subject to four conditions. Paragraph B, was the so called self-help provision. The beneficiary person might exercise a limitation and exception to the right of reproduction, not of distribution. In other words, a beneficiary person or somebody acting on her or his behalf, might make an accessible format copy of a work for his or her personal use. But this beneficiary person might not distribute that copy, which she or he had made for herself or himself. Paragraph 3, 4 and 5 of Article C provided for flexibilities to accommodate national existing national legislations.
372. The Delegation of the United States of America explained Article D on the cross-border exchange of accessible format copies. It consisted of three parts and followed the structure of Article C. As C(1) provided a general statement of the exception or limitation, C(2) provided a specific mechanism, and C(3) allowed countries to do anything else that was acceptable under the three-step test, article D had the same three-part structure. The first part of Article D(2), paragraph a, enshrined a system in which an authorized entity in country A was permitted to provide accessible format copies to authorized entities in other Member States or Contracting Parties. Article D(2), paragraph b, provided an alternative mechanism by which an authorized entity in country A could directly serve the needs of the visually impaired in country B, as long as that authorized entity took steps to ensure that the beneficiary persons in country B were properly entitled under country B's law to receive accessible format copies. The end of Article D(2) contained a provision that Member States or contracting parties might limit the distribution or making available to applicable accessible format which could not be otherwise obtained at a reasonable price and a reasonable time in the country of importation. On that Article the distinguished Delegation of Algeria had noted that the original document said "persons with print disabilities" when it should say "beneficiary persons." The last sentence of paragraph D(2) read "special format" and actually should read "accessible format." Article D(3) provided a parallel to Article C(3). Article D(3) provided that if a Member State did not wish to follow the system provided for in article D(2), that Member State could provide any other exception or limitation in its national copyright law to permit the cross-border exchange of special format copies, which met the three-step test established in the Berne Convention.
373. The Delegation of the European Union stated that, broadly speaking, the aim of that Article E was to correspond to article D, on cross-border exchange. The inescapable logic was that to export copies from one Member State to another, the receiving Member State had to be in a position to import those copies and that was what article E aimed to achieve. A point of rather long and passionate discussions was concerning how beneficiary persons under the instrument could be able to receive or import copies with the assistance from friends, neighbors, family members and relatives. All co-sponsors certainly understood that that was possible but it would not be advisable to engage on a discussion on the meaning of family circle or private sphere.

374. The Delegation of Mexico explained that Article F contained an obligation to ensure that technological protection measures allowed persons with print disabilities having access and effectively using accessible works.
375. The Delegation of Brazil explained that, as regards Article G, in some jurisdictions contracts might override statutory exceptions and limitations, while in other jurisdictions, it would not be possible. That provision reflected that reality. It left Contracting Parties/Member States free from addressing the relationship of contract law and statutory exceptions and limitations.
376. The Delegation Australia referred to Article H as a not prescriptive provision. It was an important reminder to endeavor to ensure that the personal information of people with print disabilities was treated no differently to others under relevant laws. To give one possible example, if a person went to a library and borrowed books, information on personal details or particular tastes in books remained confidential.
377. The Delegation of the United States of America requested that the Secretariat circulated the amended version of document SCCR/22/15. It asked whether the Chair wished to consult with regional coordinators in order to have a constructive process. It also asked whether the Chair could generate a separate working paper following the request of the Africa Group. While the co-sponsors respected that concern, they also wanted to ensure the integrity of their proposal in the amended version of SCCR/22/15.
378. The Delegation of Nigeria noted that the co-sponsors were not providing comments or responses to amendments and conclusions posed last Friday, June 17. The best way to move forward was to have all the proposals on the table, in combination with what had been proposed.
379. The Delegation of Canada supported the proposal of the United States of America to turn the consensus document into a working document for the Committee.
380. The Delegation of Kenya felt disturbed by the way in which the issues were being conducted. It was not sure whether the term consensus document would be the right title for the document. This was a proposal on an international instrument on limitations and exceptions for persons with print disabilities. Another remark was is the mere formal presentation of the document despite the remarks made by the African and Asian Group. Answers had not been satisfactory so far. Changes made were not substantive but simple language-focused. For instance, the crux of the matter for the African Group, and probably for other delegations, was what exactly the concept of authorized entity was and how it fitted into the entire document. Another problematic provision was Article F on technological protection measures about which apparently there was no room for negotiation.
381. The Delegation of Zimbabwe was puzzled about the proposal of the United States of America to generate another parallel document to SCCR/22/15. It asked whether the latter would be also called a consensus document.
382. The Delegation of Senegal noted that there could be some problems to implement the definition of authorized entities in Africa. In addition, as regards Article C(5), Africa was not totally opposed to remuneration in the exceptions, particularly regarding commercial entities, but there could be a problem if the country of origin requested a remuneration when the recipient country did not provide for it. As to Article F, technological measures should not in itself hinder access on the part of beneficiaries to a work in a format that was

appropriate for them, given their level of impairment and their disability. The current text was around 80% similar to the text proposed by the African Group in document SCCR/22/12. It hoped to reconcile those viewpoints and to produce a truly consensus document.

383. The Delegation of Venezuela (Bolivarian Republic of) thought it was a mistake to call the document a consensus document, but it was called so because it covered the whole history of the existing proposals. It seemed that nothing had happened between Monday and Wednesday and delegations were going around in circles.
384. The Delegation of Angola supported the statements of the other African Delegations, particularly regarding the concept of authorized entities and technological measures. The Committee had to try to get the document to a position where it could be accepted by consensus.
385. The Delegation of the United States of America noted that delegations were at a crucial point in discussions and they had to be responsible. The sponsors of the proposal needed some time to confer with the World Blind Union, and the representatives of other blind organizations.
386. The Chair explained that the new amended document of the co-sponsors would be document SCCR/22/15 Rev 1. He asked the Secretariat to compile all the comments made so far while the Committee engaged in discussions on the other matters of the agenda. There were only two working days left.
387. The Delegation of Malawi was in support of what the other African delegations had stated and requested the Chair's advice on the way forward.
388. The Delegation of Nigeria proposed, first, to remove the mention of consensus document; second, to remove any idea of co-sponsors; and finally, to set up an informal process where the coordinator of South Africa, as well as other coordinators participate and deal with the text.
389. The Delegation of Colombia agreed with way forward proposed by the Chair. Also, it said it would like being associated with the co-sponsorship of the consensus document SCCR/22/15 Rev. 1.
390. The Delegation of the Russian Federation agreed that the Secretariat compiled all comments in an official document and that delegations started discussing it article by article. That was the way in which the Committee could produce something valuable.
391. The Delegation of Pakistan thought that despite the gloominess in the room delegations had made quite some progress. If the co-sponsors were not ready to make document SCCR/22/15 a negotiating document, it was their right. It proposed two steps. Step one would be to call the document a proposal on an international instrument on limitations and exceptions for persons with print disabilities. The second step would be not to lose the work already done and collate all the comments made by African Group and other countries. The following day, the revised document could be on a slide in the room and negotiation could start.
392. The Delegation of South Africa proposed to get rid of any references to consensus document or co-sponsorship. The title and the way forward proposed by the Delegation of Pakistan was acceptable.



393. The Delegation of Venezuela (Bolivarian Republic of) agreed with the procedure to move forward.
394. The Delegation of India supported the statement of the Delegation of Pakistan.
395. The Delegation of the United States of America welcomed the proposal by the Delegation of Pakistan and thanked the Delegation of Colombia for the support to the proposed text.
396. The Delegation of Nigeria agreed with the statement made by the Delegation of Pakistan.
397. The Delegation of the United States of America requested a 15-minute break so as to allow all groups to coordinate.
398. The Delegation of Uruguay announced that it would co-sponsor document SCCR/22/15 Rev. 1.
399. The Chair said that the new document would be called proposal on exceptions and limitations for persons with print disabilities.
400. The Delegation of the European Union asked whether the proposal would be a text from the Chair.
401. The Delegation of Pakistan asked for the name of the new document, and whether it would remain SCCR/22/15.
402. The Chair clarified that the latest version of the co-sponsors was SCCR/22/15 Rev 1. The new document of the Chair would be document SCCR/22/16.
403. The Chair presented document SCCR/22/16 Prov.
404. The Delegation of Pakistan looked forward to having substantive discussions on the document.
405. The Delegation of France sought clarification on the content SCCR/22/16 Prov. and all the annotations, modifications and deletions.
406. The Chair said that the document tried to cover most of the comments made on Monday, June 20. Naturally it included the comments by the African Group.
407. The Delegation of South Africa requested to put the document on the screen.
408. The Chair said that the first step was to have printed document distributed to all delegations. A second step was to understand it.
409. The Delegation of France requested to suspend the plenary session to discuss the content of the document with members of Group B.
410. The Delegation of Nigeria requested to put the document on the board so as to facilitate the discussions.
411. The Chair said that delegations had to understand the substance of the document.
412. The Delegation of Slovenia, on behalf of the Group of Central European and Baltic States, thought it was useful to put the new text on the screen. At a certain point it would be

probably necessary that the regional groups reconvene and prepare their positions in relation to the document.

413. The Delegation of South Africa noted that document SCCR/22/16/Prov. contained mainly inputs from the African Group. Other delegations should have the opportunity to provide their inputs.
414. The Delegation of Venezuela (Bolivarian Republic of) could understand that putting the document on the screen entailed the risk of having a very lengthy debate.
415. The Chair said that the main concern was to understand the document to see if it covered all the ideas. The process had to be transparent, clear and inclusive.
416. The Delegation of Pakistan said that the document contained the views expressed by Member States on the proposal. Unless there was a different view, the document could be a formal document.
417. The Delegation of the European Union noted that many delegations had expressed their frustrations as to not having the possibility to have an open discussion. It supported the proposal of South Africa and Slovenia to have the opportunity to open the floor on the text of the Chair and see if it had reflected the remarks and views of the African Group. The text could be put on a screen and delegates could make further comments.
418. The Delegation of Brazil could go along with the suggestion made by the European Union.
419. The Delegation of Barbados supported the views expressed by the African Group and Brazil.
420. The Delegation of Ecuador supported the African Group's proposal seconded by the European Union.
421. The Delegation of China thought that document SCCR/22/16 Prov. could be a basis for future discussions.
422. The Delegation of the United States of America supported the proposal to have the text on the board. At some point, after listening to all comments, the Committee could move to an informal consultation with regional coordinators plus two, led by the Chair, to come up with the formal document that would be the text that we would adopt from the Committee.
423. The Delegation of India supported the African Group and the EU intervention to discuss immediately the document put on the screen.
424. The Delegation of the European Union proposed to allocate some time to coordinate at regional level but also with the different proponents of proposals.
425. The Delegation of Venezuela (Bolivarian Republic of) proposed to first adopt the document as a working document and then proceed with the debate.
426. The Chair invited to comment the text put on the screen.
427. The Delegation of Japan proposed that paragraph 3 of the preamble started as follows: "Reaffirming the importance and flexibility..."

428. The Delegation of India proposed that in last sentence of the definition of ““accessible format copy” after the word “exclusively” the “visually impaired persons and persons with print disabilities,” be replaced by beneficiary persons.
429. The Delegation of South Africa, on behalf of the African Group, asked to see the changes made on the screen.
430. The Delegation of Switzerland, on the subject of authorized entity, reserve its position on Paragraph 3, as the provision should not be used to the detriment of the beneficiary persons of the instrument.
431. The Delegation of India, as regards the definition of authorized entity, in the second line, the term “primary missions” should be replaced by “activities.”
432. The Delegation of the United States of America referred to the comment made by India. That change was reflected down below in the comments on the proposed changes where it said in the first paragraph: Replace primary missions by activities. It strongly objected to start putting brackets in the text. If the Committee started down with that procedure, the Committee would be further and further from tangible results. That was not fair to the beneficiary persons for whom the exercise was undertaken, the blind, visually impaired and print disabled persons.
433. The Delegation of Kenya, on behalf of the African Group, sought clarification regarding the Chairman's document SCCR/22/16/Prov. Article A, paragraph 3, as stated by the Delegation of Switzerland, was problematic and the Delegation asked to have a clear explanation or delete it.
434. The Chair explained that the purpose of the exercise was to cover all the delegations' concerns, compile all their opinions, and perhaps the next stage would be to try to clarify or amend things in the future. If that process was not followed, the Committee would create a Frankenstein document. Delegations should feel comfortable with the text but not necessarily fully satisfied.
435. The Delegation of Japan requested some clarification about the “authorized entity” term. It asked how beneficiaries got trust and whether authorized entities were authorized by each Government.
436. The Delegation of Senegal, in relation to the term “authorized entity,” said that the Committee had to bear in mind the fact that there were very different levels of development in some countries regarding that particular point. It was important that the paragraph be enlarged to include an indication as to who should authorize those entities. As to exceptions and limitations, it proposed to consider a provision that stated clearly that it was up to each party to define the practical ways, means and conditions under which an entity could act legally and in accordance with that document. The reference to a nationwide network of organizations also posed some problems, particularly regarding the characteristics required. The clearer the text was, the more chance it had to get a consensus of Member States.
437. The Delegation of Iran (Islamic Republic of) stated that the nature of the document should be a binding treaty. “Member State” should be replaced by “Contracting Party.” It could not accept the definition of “Member State” as it should include all WIPO Member States and not a specific treaty party.
438. The Delegation of Syria concurred with the opinion expressed by the Delegation of India.

439. The Delegation of South Africa, on behalf of the African Group, reserved its comments on the definition of Member States.
440. The Delegation of the United States of America asked the Delegation of Iran (Islamic Republic of) and Syria why the definition on Member States was problematic.
441. The Delegation of Venezuela (Bolivarian Republic of) proposed to collect the comments, but not start the discussions.
442. The Delegation of Iran (Islamic Republic of) could not accept the definition because its country would be excluded from the scope of the treaty.
443. The Delegation of the United States of America answered to the Delegation of Venezuela (Bolivarian Republic of) that it was not its intention to drag the process. But where new comments were raised and there was no understanding about what their basis was, a relevant clarification could be provided.
444. The Delegation of Japan asked why a reference to the Berne Convention had not been included in the last paragraphs of the definitions.
445. The Delegation of Syria thought that no country should be excluded from the scope of the treaty.
446. The Delegation of India supported the statement made by Syria. Member States could encompass WIPO Member States or the Berne Convention members.
447. The Delegation of Senegal proposed to differentiate copyright from related rights. It also asked what the bona fide nature of persons with print disabilities meant in the context of the definition of authorized entities.
448. The Delegation of Japan suggested that Paragraph 4 of Article C be moved under Paragraph 2(b) to be consistent with Article D.
449. The Delegation of India referred to Article D(2), second line, and proposed to replace "special format" by "accessible format."
450. The Delegation of Switzerland understood that Article C(1) referred to a minimum standard.
451. The Delegation of the United States of America agreed with the correction made by India on accessible format.
452. The Delegation of the European Union noted that Article C(5) covered the possibility that Member States provided remunerations for limitations and exceptions under their national law. If there were countries that indeed provided that system, the Delegation asked why some delegations wished to explicitly remove that provision.
453. The Delegation of Japan understood that Article D dealt about the exploitation by authorized entities from country A to authorized entity in country B or to beneficiary persons in country B. It asked, if country A did not have an authorized entity but another system, whether accessible formatted works in Country A could be exported based on country A's law. In other words, country A was not required to apply Article D.

454. The Delegation of Switzerland considered that Article F, paragraph 2, represented a very high standard, perhaps higher than that of the WCT and of the WPPT, which gave a subsidiary recourse after having tried to find a solution with the rightholders. The goal of this instrument was to facilitate access to the visually impaired and the blind, not to make it more difficult. It proposed to add at the beginning of the provision the words “in the absence of voluntary measures” or otherwise to add “at least”. That would enable countries like Switzerland to maintain their standards which complied with the WCT and WPPT. The Delegation did not want to create a precedent for other limitations and exceptions to come.
455. The Delegation of the European Union noted that it had asked questions and had not yet a feedback. As regards Article E, it questioned why it was necessary to add the words “without the authorization of the copyright holder” as there was no added value.
456. The Delegation of India requested to use the same title in Article F as Articles 11 of WCT and 18 of WPPT “Obligations concerning Technological Measures.”
457. The Delegation of Iran (Islamic Republic of) believed that the second paragraph of Article F was adding more condition on the first paragraph. The first paragraph was enough.
458. The Delegation of India suggested an alternative formulation to Article G. It should read that it should not be possible for the rightowners to be able to do away with the exceptions and limitations provided in the treaty.
459. The Delegation of Iran (Islamic Republic of) concurred with the suggestion by the Delegation of India regarding Article G.
460. The Chair asked whether the Committee was ready to adopt the document, as it covered all the opinions expressed by the various delegations.
461. The Delegation of the United States of America suggested that Chairman prepared a revised text, taking into account the various comments made.
462. The Chair proposed that document SCCR/22/16/Prov. be approved by the Committee as the basis for negotiations in the future.
463. The Delegation of the European Union noted that a number of questions that had been put forward had not been replied. It proposed to the document remained a document of the Chair.
464. The Chair said that little by little the document could be changed so that everybody was comfortable with it.
465. The Delegation of the United States of America said that for the moment this delegation would be most comfortable with treating it as a Chairman's text.
466. The Chair agreed to present a revised document. The document would remained a document by the Chair.

#### **PROTECTION OF BROADCASTING ORGANIZATIONS (continuation)**

467. The Delegation of South Africa stated that it had taken the initiative of presenting a draft work plan for discussions by the Member States. In May 2009, the Committee had

adopted recommendations that studies be undertaken on the socioeconomic impact on broadcasting piracy. Those studies had been presented at the previous session of the Committee and had revealed that signal piracy was a serious problem for the broadcasting industry worldwide. Significant resources had been used to discuss this issue in particular through regional seminars and meetings. The Committee had to consider the next steps. There was some evidence of piracy as had been demonstrated by the statement made by the Delegation of New Zealand. The proposed draft work plan was taking into consideration the fact that significant resources had been spent on broadcasting over the previous years and it was aiming at promoting focused discussions that would be result driven and would help expedite the work. It was proposed that the twenty-second session of the SCCR established a Working Group on the protection of broadcasting organizations. The objective would be to finalize negotiations on the draft treaty for the protection of broadcasting organizations in line with the mandate of the 2007 WIPO General Assembly. The Working Group would be open to all WIPO Member States. The following documents would form the basis of the negotiations: the proposal from the delegation of South Africa, document SCCR/22/5; the proposal by the Delegation of Canada, document SCCR/22/6; the proposal by the Delegation of Japan, document SCCR/22/7; the elements of the draft treaty on the protection of broadcasting organizations prepared by the Chair of the informal consultations, document SCCR/22/11. The proposed duration of each Working Group would be of five days.

468. The Delegation of India requested some clarification with respect to the South African text proposal which was to be discussed and which was not a legal document which had been adopted and discussed in the SCCR plenary.
469. The Delegation of South Africa recalled that an invitation had been extended to Member States at the twenty-first session to submit proposals. By the end of the closing date which had been fixed by March 1, 2011, only three proposals had been received from South Africa, Japan and Canada, although that was an open process for any Member State to submit proposals. Although the work plan had not been formally adopted it provided ideas on how the process could be further advanced. Member States were invited to submit their suggestions the draft to amend it.
470. The Delegation of India asked how the process could move forward on the basis of informal papers or non-papers.
471. The Delegation of Senegal thanked all the delegations that had submitted a proposal. The work plan constituted an interesting proposal but, since a lot of work had already been achieved on the topic, the next step would be to draft a document in treaty language based on the three recent proposals that had been submitted as well as the older proposals. The working group would be an open-ended group where any delegation would be welcome to contribute to its work which would essentially be the drafting of a text in treaty language.
472. The Delegation of the European Union stated that the South African proposal was characterized by three elements namely target, timetable and text. The proposal had been very specific on target and timetable but the nature of the text that had been proposed was unclear. More time was requested to further discuss each of these issues and for clarifying how the document could take into account all of the proposals that had been made in the past and not just very specific proposals that had only been presented recently.
473. The Delegation of Pakistan, on behalf of the Asian Group, thanked the South African delegation for submitting the proposal and stated that more time was needed for delegations to consider the proposal and further discuss it. Further clarity was needed with

regard to the status of the document presented by the Delegation of South Africa. It questioned how the comments made in the Committee could be reflected in the document. The Delegation of Nigeria stated that the momentum towards finalization of the negotiations was growing and it was looking at the particular dates and steps which were required to get to the required destination for the adoption of the treaty. The work plan was a good step to provide guidance and a clear direction as to where the Committee was headed.

474. The Delegation of Japan supported the proposal made by the Delegation of South Africa and expressed certain flexibility on the content of the work plan.
475. The Delegation of Kenya supported the work plan subject to a couple of modifications. It recalled that Member States had been invited to make proposals in addition to document SCCR/15/2/ Rev. as that document had created some problems and the new proposals were aimed at clarifying some particular issues in addition to that specific document. It supported the statement of the Delegation of Japan.
476. The Delegation of Canada stated that the work plan constituted a useful approach to developing a draft text that could be used. It focused its comments on the timetable issue and recalled that many delegations had to travel great distance and incur great expense to attend WIPO meetings. The proposal to have separate meetings in Geneva would imply the expenditure of additional resources. It proposed that the working group meetings be attached to or tied to the convening of SCCR meetings and be organized consecutively or concurrently with an SCCR. As regards the funding of Member States, the delegation could not provide any comment.
477. The Delegation of the European Union concurred with the statement made by the Delegation of Canada and requested clarity on the text submitted.
478. The Delegation of the United States of America noted that the document submitted by the Delegation of South Africa represented a tremendous effort and associated itself with the concerns expressed by the Delegations of the European Union and Canada as to the resource implications of additional meetings. That issue needed to be addressed. It also supported the concerns expressed by the delegation of India which required proper attention to be adequately resolved.
479. The Assistant Director General of WIPO drew the attention of the Delegation of India to the decisions of SCCR/21 with respect to broadcasting organizations where in Paragraph 4 it referred to proposals if possible in treaty language. So if any of the proposals submitted by March 1 was not in treaty language it could be considered they would still be eligible for consideration because the Members had asked for "if possible." It also explained that the WIPO Secretariat was in a challenging situation as it had to support work towards progress within the budgetary constraints. It was however willing to facilitate progress in the discussions.
480. The Chair stated that the proposals submitted by the Delegations of South Africa, Canada and Japan were interesting and could be used as the basis for any other type of document that could be drawn up in the future. That was however not to be considered as an exhaustive list. It also recalled that informal consultations had been organized in April 2011. 481. The Delegation of South Africa agreed with the statement made by the Delegation of Canada to align the working group sessions with the SCCR meetings to cut down delegations expenses.

482. The Delegation of India brought to the attention of the Committee that the decision taken in the 33rd and 34th session of the WIPO General Assembly was to approve the convening of the diplomatic conference on the protection of rights of broadcasting organizations under certain conditions. The objective was to negotiate and conclude a WIPO treaty on the protection of broadcasting organizations, including cablecasting organizations. The scope of the treaty was to be confined to the protection of broadcasting and cablecasting organizations in the traditional sense. It was agreed that document SCCR/15/2 would constitute the basic proposal with the understanding that all Member States could make proposals at the diplomatic conference. A work plan to expedite the treaty was needed.
483. The Delegation of South Africa stated that the fate of document SCCR/15/2 was with the Committee and that the most important issue was the adoption of a work plan. The list of documents which had been proposed could be considered as non-exhaustive.
484. The Delegation of Zambia thanked the Delegation of South Africa for the draft work plan and considered it a useful contribution to taking the discussions and broadcasting forward, with the understanding that the list of submissions was non-exhaustive. It supported its adoption to expedite the process.
485. The Assistant Director General of WIPO stated that the statement made by the Delegation of India was correct and the conclusions of the 21st session of the SCCR referred to SCCR 15/2 Rev. to form the basis of the preparation of a new draft treaty in addition to the new proposals.
486. The Delegation of India thanked the WIPO Secretariat for its explanation and requested whether document 15/2 Rev. existed or not and could be listed in the work plan.
487. The Chair reiterated the proposal made by the WIPO Secretariat to add an additional point in the work plan referring specifically to document SCCR/15/2 Rev.
488. The Delegation of India referred to the statement made by the Delegation of Iran (Islamic Republic of) stating that there was no need for the WIPO General Assembly to revise the mandate given to this SCCR following the signal based approach in the traditional sense. Its position differed as the proposals which were listed in the proposed work plan went beyond the mandate given by the General Assembly.
489. The Delegation of the United States of America shared India's concerns as to the proper mandate. It requested clarifications as to what was exactly intended by the document with reference to the consultations or working group. It also requested why non-governmental delegations had been excluded from the working group. It also expressed concerns to the possibility of the working group having for mandate to finalize negotiations on the subject matter.
490. The Delegation of India supported the comments made by the Delegation of the United States of America.
491. The Delegation of South Africa clarified that the work plan was a draft which was not presented as a final document but as a way to move forward the discussions and the working group could be aligned to the SCCR session to avoid unnecessary trips to delegations. However its main objective was to engage in text-base discussions in accordance with the conclusions that the Committee had adopted at its 21st session. That was the reason why it had not proposed non governmental organizations to be part of the working group although it was for Member States to make the final decision. As regards the mandate of the working group, it would be for the SCCR to monitor its progress



and work.

492. The Delegation of Iran (Islamic Republic of) considered that the discussions had not reached a treaty language stage to consider article by article. There was no need to amend the decision of the WIPO General Assembly but rather a need to expedite or to have a work plan to finalize the negotiating process which had begun at WIPO in 1997.
493. The Delegation of India expressed discomfort over the proposed work plan. The 2007 General Assembly mandate was about protection of the rights of broadcasting organizations following a signal based approach in the traditional sense and the discussions referred to different documents listed in the work plan which directly or indirectly raised issues relating to either webcasting or simulcasting or retransmission over computer networks. Those issues did not fall under the signal based approach in the traditional sense. The protection of broadcasting organizations through signal-based approach in the traditional sense was to prevent the unauthorized use of signals before and during broadcasting. However, any piracy of content after broadcast of signal meant for reception by public was violation of right of content owner rather than the broadcasting organization. Unauthorized signal piracy included rebroadcasting over cable networks without permission or license in aforementioned communication process. There were several ways of doing signal piracy which included use of counterfeit decoders and piracy of broadcast. All forms of piracy were done in the traditional sense. Webcasting or signal casting including retransmission over computer networks could not be included in the signal-based approach, even on the basis of a "technology neutral approach" or convergence. India had been of the consistent view that discussions were not ripe to cover webcasting and simulcasting issues. The three studies commissioned by the WIPO Secretariat on the unauthorized use of signals had brought out the existing differences in the use of the broadcasting technology in the developed world and developing world. Eighty percent of broadcasting in developing countries was done from the traditional platforms. The words like "any means" resulted in covering in the scope webcasting and simulcasting which were still open questions which required further exploration and study. In law there was the principle of "ubi jus ibi remedium", i.e. "where there is right there is remedy"; if broadcaster had no right of providing the content over other platforms of exploitation it could not ask for remedy in case of piracy as the right was with the content owner, because the right of broadcasting organization on the programme carrying signal ended after its reception. Therefore any rights and obligations discussed under the signal based approach in the traditional sense ought to be a differentiation between the authorized rebroadcast by the cable casting organizations which were merely repackaging the original broadcast and putting them through their networks in the traditional sense and simulcasting or retransmission over computer networks which were obviously also the scope of the signal based protection. Broadcasting organizations could not obtain exclusive rights over the content which could be done only through contract. The live program carrying signal was over once it reached the TV set reception. The subsequent picture which was seen was content. As regards the protection of the investment made by the broadcasting organization, it could not be extended to the content. As regards the technicalities of retransmission of the signal in the computer network, there were a lot of difference between broadcasting signal based approach in the traditional sense and then the signal broadcasted in an unauthorized way by a pirate over the computer networks. In the traditional sense, when a signal was generated and emitted from the traditional platform of origin and was used without authorization over other platforms of exploitation, this could not be considered as broadcasting because technically retransmission over a computer network was not broadcasting at all. Even though the signal was taken by a person in an unauthorized manner from the content owner for live streaming when it through the computer networks the signal got broken into chunks and encapsulated into UDP/TCP frames which were then encapsulated in IP packets for transport in Internet

system. As radio frequency broadcast signal was not reaching the computer networks retransmission over computer networks could not be considered as broadcasting and the content owner had to fight any unauthorized live streaming or making available to the public content as exclusive right owner. If a broadcaster owned the content as well by way of assignment or contract an injunction in the court should have been filed as content owner and not as broadcaster. Thus, giving an intellectual property right to broadcasters to prohibit transmission over the Internet was untenable. Computer communication links that did not support packets such as traditional point to point telecommunication links simply transmitted the data as a series of bits. The focus of the protection had to be on providing broadcasting organizations with the means to prevent or prohibit piracy of content carrying signals and any announcement of rights beyond prevention of signal piracy would be contrary to the purpose of the treaty. No exclusive rights of broadcasting organizations could overlay the rights of content providers. The protection had to be accorded to signal prior to and during the transmission and broadcasting organizations required protection from the unauthorized use of signals rather than exclusive rights. The issue was whether the signal-based approach could include fixation, post fixation rights and the right of retransmissions. All these rights belonged to the copyright owners and not the broadcasting organizations.

494. The Delegation of the United States asked clarification on the status of the work plan submitted by the Delegation of South Africa.
495. The Delegation of Senegal recalled the statement made by an artist an old man coming to the end of his days and who had said he did not want posthumous praise but rights when he was alive. Content had to be protected beyond the issues of producers and broadcasters. Broadcasters were the major users of the protected repertoire. The mandate given by the WIPO General Assembly requested additional work bearing on the issue taking into account three key points: the objective, the scope, and the coverage of rights. One of the questions to be addressed was whether the SCCR was legally entitled to set up a committee to work on this issue. Broadcasting organizations had new ways of making their programs available and, whatever platform they used, the signal was the cornerstone. Broadcasting organizations certainly were involved in television broadcasting, but increasingly as well as that alongside that so-called traditional form of broadcasting they were also using new technologies. It was looking forward to making progress on the work plan.
496. The Delegation of South Africa explained the work plan constituted a proposal to the Committee which could be the object of further amendments from delegations. Broadcasting worked on the basis of signal and therefore the focus of its proposal was the broadcast signal. Rather than referring to a specific technology it provided a definition of a broadcasting organization. Broadcasting was throughout the world a licensable activity subject to an official process. It also referred to the statement made by the WIPO Director General at the 21st session of the SCCR asking why the Committee had to be engaged in that exercise if Member states were not willing to move forward.
497. The Delegation of the United States requested explanation on the work plan status and proposed that the Chair adopted it as his document.

#### **PROTECTION OF AUDIOVISUAL PERFORMANCES (continuation)**

498. The Delegation of Nigeria reaffirmed that the 19 Articles agreed on should not be reopened. The subject before the Committee was Article 12 for which a draft text has been proposed by the Delegations of India, Mexico and United States of America.

499. The Delegation of the United States of America supported the statement made by the Delegation of Nigeria and noted that the proponents of the proposed Article 12 were very appreciative of the positive reaction that came from so many Delegations. After the holding of informal discussions possible minor changes might be introduced in Article 12 to address some concerns that have been brought by different delegations. Those changes might also address some of the concerns raised by Brazil in prior meetings of the Committee.
500. The Delegation of Brazil stated that it had listened carefully the positions put forward by a number of delegations regarding the importance of not reopening the 19 Articles already agreed upon in 2000. The Delegation has presented proposals for amending some of the 19 Articles. A possible compromise would be to insert new language in the preamble and to have agreed statements related to some articles.
501. The Delegation of Mexico thanked the Delegation of Brazil for its flexible position. It believed that based on the consensus on Article 12, the necessary conditions to make progress were met. The proposed Article 12 was agreed upon by the representative organizations of performers present in the room.
502. The Delegation of South Africa reiterated the position of the African Group. The 19 Articles should not be reopened and the Committee should finalize the wording of Article 12 on transfer of rights. The Delegation welcomed the draft text proposed by the Delegations of India, Mexico and the United States of America and suggested few amendments. The Delegation sought clarification about the meaning of the phrase “audiovisual fixation produced under its national law.”
503. The Delegation of the United States of America welcomed the thoughtful suggestions made by the African Group.
504. The Delegation of India indicated that the changes suggested by the Delegation of South Africa in paragraph 2 and paragraph 3 were typical drafting errors. There was no objection to incorporate those changes.
505. The Delegation of Japan thanked the Delegations of India, Mexico and United States of America for submitting the proposal and indicated the Delegation needed time to examine the consistency of the proposed Article 12 with its legislation.
506. The Delegation of Mexico noted that it would be appropriate to carry out consultations to consider the proposals made by the Delegation of South Africa.
507. The Chair invited the Delegations of India, Mexico and United States of America to meet with the Delegations of Brazil, the European Union, Nigeria and the regional coordinators to hold the informal consultations.

#### **CONTRIBUTION OF THE SCCR TO THE IMPLEMENTATION OF THE RESPECTIVE DEVELOPMENT AGENDA RECOMMENDATIONS**

508. The Delegation of South Africa, speaking on behalf of the African Group, said that the implementation and mainstreaming of the Development Agenda recommendations in all areas in WIPO was of great importance to the African Group. The Committee had made significant strides in the past year in addressing the three main substantive agenda items, namely exceptions and limitations, audiovisual performances and broadcasting

organizations. The minimum standards for intellectual property use through exceptions and limitations to copyright and related rights remained an important issue not only to the African Group but to all developing countries and least-developed countries, as well as the developed countries, which had advanced systems of exceptions and limitations upholding the public interest, and especially contributing towards the achievement of the biennium development goals and other international development goals. It was within that context that the African Group attached great importance to the exceptions and limitations for persons with disabilities, including the visually impaired. The African Group was therefore encouraged by the work of the Committee. The WIPO regional seminars on the protection of audiovisual performances and broadcasting organizations held in various countries in 2010 helped developing countries in understanding the socioeconomic impact of norm setting at the international level in the areas of broadcasting and the movie industry. One of the key recommendations of the Development Agenda was to ascertain the application of norm-setting to developing countries. The Abuja seminar for African countries demonstrated the benefits the African countries could derive from the protection of audiovisual performances and broadcasting organizations. The Abuja seminar had also reinforced the need for the Committee to expeditiously working towards concluding the treaties for the protection of audiovisual performances and broadcasting organizations. The Delegation hoped that the session would reach a consensus on a diplomatic conference for adopting a treaty on the protection of audiovisual performances, a draft treaty text for convening a diplomatic conference for exceptions and limitations for people with printed disabilities, and a work plan for the protection of broadcasting organizations. The Delegation called for that exercise to be guided by Cluster B of the Development Agenda, particularly Recommendations 15 and 22.

509. The Delegation of the United States of America, speaking on behalf of Group B, pointed out that during the previous Committee sessions, the agenda item on the Development Agenda recommendation reporting was dealt with after all substantive items. Group B understood that the procedures in the SCCR should not create a precedent.
510. The Delegation of the European Union wanted to hear views of the members on the contributions the Committee had made in the implementation of the Development Agenda. It added that the discussions on the contribution of WIPO bodies to the Development Agenda recommendations should in principle take place after discussions and conclusion of the other agenda items, since the objective of the discussion on the development coordination mechanism was to take into account and to report on all of the work and, in particular, on the results of the Committee.
511. The Delegation of India, speaking on behalf of the Development Agenda Group (DAG), expressed its satisfaction for the conclusion and thanked all Member States for the spirit of accommodation and flexibility. The Group believed the 45 recommendations of the WIPO Development Agenda adopted by the WIPO General Assembly in 2007 were immediately relevant to the ongoing work in that Committee, and therefore welcomed the opportunity to speak about how the SCCR was integrating the Development Agenda into its work. The DAG welcomed in particular the work plan agreed to at the 21st SCCR session that integrated rule-setting in the areas of exceptions and limitations to copyright, with particular reference to persons with print and other related disabilities, as well as libraries and archives, education, teaching and research institutions. The Group recognized the value of copyright in encouraging creativity and cultural development. It believed that with exceptions and limitations in key areas would allow governments to strike the necessary balance in their intellectual property systems to ensure that those rights did not adversely affect access to knowledge and culture to disadvantaged segments of the population, especially those in developing countries. Therefore, the Group welcomed the progress being made on the persons with print disabilities treaty and looked forward to an early and

positive conclusion of it to allow the vast population of visually impaired and print disabled persons to access, enjoy and derive benefits from the wealth of printed literature around the world. The Group also looked forward to similar progress being made with regard to similar initiatives in the area of libraries, archives and education, as outlined in the SCCR work program. The Group remained committed to those discussions and optimistic about constructive engagement in that dialogue with all WIPO Member States. The Group was also encouraged by the forward movement in that session on the two long-pending draft treaties under discussion, namely on the protection of audiovisual performances and on the protection of broadcasting organizations. The Group hoped that the agendas on the substantial instruments would be resolved and progress towards their finalization while moving in the same direction on the draft treaty for limitations and exceptions for visually impaired persons. The Group reiterated the importance to ensure that all those norm-setting proposals were treated on par, and there was no second class treatment to any particular issue or community. The Group also hoped that the Development Agenda recommendations, especially those pertaining to norm setting in Cluster B would fully take into account when finalizing the instruments. The Group expressed satisfaction with the progress made. To that end, the Group looked forward to an early and positive conclusion of binding international legal instruments on all of the three ongoing norm-setting initiatives in the SCCR.

512. The Delegation of Brazil expressed its views on the contribution of the implementation of the Development Agenda and believed that should be a model adopted by all relevant WIPO bodies. Since the approval at the last meeting of the work program on exceptions and limitations to visually impaired persons, libraries, archives and persons with print disabilities, the Committee had been on the right path to implement the Development Agenda recommendations, which called for the need for balances in all WIPO normative activities. The need for balance had already been acknowledged in the WIPO Copyright Treaty, which stated "recognizing the need between the rights of authors and the larger public interest, particularly education, research and access to information as referred to in the Berne Convention." The DAG thought it was important there was no second class treatment on the issue of exceptions and limitations. The Delegation further stressed that there was no reason why the Committee should be discussing a treaty for the benefit of actors and even for the benefit of broadcasting organizations, and not for the benefit of the blind. The Delegation pointed out the need to look further into that issue to find a sufficient and adequate solution. It agreed with the statement made by the European Union that the item should be the last substantive item in the agenda so as to assess what had been decided upon.
513. The Delegation of Pakistan, speaking on behalf of the Asian Group, acknowledged the inclusion of the new agenda item on implementation of the relevant recommendations and the work of the SCCR. The Group believed that the 45 recommendations of the Development Agenda adopted in 2007 were directly relevant to the work of the Committee. The Group encouraged the work and discussions in the SCCR regarding norm-setting on limitations and exceptions which were an essential part of the positive agenda in WIPO. In particular, the Delegation welcomed the work program which was agreed during the 21st session of the SCCR that looked for norm-setting in the areas with exceptions and limitations to copyright. The Delegation highlighted that Cluster B should form the norm-setting in the SCCR.
514. The Delegation of the Philippines, referring to the statements of the Delegation of Pakistan and the Delegation of India, was encouraged by the progress made in the area of norm-setting in the Committee. To make the recommendations of the Development Agenda more meaningful, the Committee should also seriously look into the maintenance of robust public domain and copyright regimes which would serve as equations of new knowledge,

follow-on innovation and enable low cost access to information for developing countries, particularly the least-developed countries. In the future, the Committee needed to revisit norms and standards embodied in various treaties administered by WIPO, particularly regarding works fallen into the public domain.

515. The Delegation of Barbados supported the statement of the Delegation of India as well as the statement from the Delegation of Brazil. It reiterated that there should be no second class treatment given to print disabled persons. While the SCCR was supporting the protection of audiovisual performances and the protection of broadcasting organizations, the Committee could surely support a treaty for the visually impaired and print disabled persons.

#### **PROTECTION OF BROADCASTING ORGANIZATIONS (continuation)**

516. The Chair indicated that the Chairman's work plan included recommendations from a number of delegations that expressed their views. They also included comments by the Chair and the Assistant Director General of WIPO. The Chair called for reactions to that document, which tried to follow the mandate given by the General Assembly. He clarified that the list was not exhaustive and that the basic proposal contained in document SCCR/15/2 had been added. Any other document could be included and the recommendations would be submitted to the 23rd and 24th sessions of the SCCR.
517. The Delegation of Angola sought the Chair's explanation on Paragraph 2.1 of the Chair's version, where it called for focusing discussion on the protection of broadcasting organizations, prior to SCCR/23 session with the aim of making a recommendation to the 2012 WIPO General Assembly on the draft treaty on the scheduling of the diplomatic conference. The Delegation sought clarification as to whether there was going to be inter-sessional working groups to allow all Member States to participate at expert level and to make recommendations. In the IGC process it was quite clear what the Committee was doing. The Delegation suggested to clean up what had already been decided upon and see how exactly the Committee could move towards a Diplomatic Conference. The Delegation felt that it was not up to the Committee to recommend a Diplomatic Conference without having gone through that process.
518. The Delegation of South Africa indicated that the Delegation was working on a proposal where it commented in Paragraph 2 that a working group should be established for that purpose to address focused discussions. That group should be open to Member States and also to the NGOs. The Delegation felt that paragraph was very important, especially to address the issue raised by the Delegation of Angola. The Delegation said that the other crucial issue was the one related to the timeline, particularly on the original proposal for a Diplomatic Conference in 2012. The Delegation of South Africa further emphasized the need to have good timelines, as they would add further impetus to the discussions.
519. The Delegation of Pakistan, speaking on behalf of the Asian Group, raised several comments and queries with regard the document. The Delegation saw no reference of the working group but for the sake of clarity it wanted to know how and where those focused discussions would be held. The Delegation also stressed the need for transparency.
520. The Delegation of the United States of America concurred with the Delegation of South Africa in that it was important that any focused discussion be open to NGOs. Building on

the suggestion from the Delegation of Pakistan, the Delegation proposed adding that the discussion was open to all WIPO Member States and inter-governmental and non-governmental organizations accredited by the SCCR. It was unclear to the Delegation on the number of days involved, as the Delegation understood that SCCR/23 session was by agreement of that Committee an extended session, and sought clarification from the Chair and the Secretariat.

521. The Delegation of the Russian Federation spoke in support of the work plan. Concurring with what was said by the Delegations of the United States of America and Pakistan, the Delegation sought clarification on the format of additional discussion on the matter, and believed that NGOs should participate interactively.
522. The Delegation of South Africa pointed out the omission to a reference to the biennium and to the adoption of the treaty through a diplomatic conference. The Delegation was not clear on what would be the focused discussions and there was a need to pay attention to the work program of the other issues of the SCCR/22 and SCCR/23 sessions. The Delegation sought clarification as to whether there would be two or three additional days in the next SCCR sessions. It agreed that the working group should also be open to NGOs, and wanted a sentence to be inserted to that effect.
523. The Delegation of India supported the proposed changes made by the Delegation of Pakistan. It proposed to add three days of discussion on the proposed treaty for broadcasting organizations prior to the normal SCCR session in November 2011.
524. The Delegation of Nigeria stressed the need to be clear on what exactly the Committee wanted to do and pointed out the clarity of the proposal of the Delegation of South Africa..
525. The Delegation of the European Union said that to advance in the area of protection of broadcasting organizations, the timing of the work was important. That was particularly the case for the documents prior to the SCCR/23 session. For a number of delegations, there was concern expressed on the implication of long SCCR meetings.
526. The Delegation of Switzerland said that, while it endorsed the comments made by South Africa, it was important to attain the objectives. The Delegation also saw the importance of having some days clearly set aside to work on that issue, preferably prior to the next two SCCR meetings. The NGOs could also attend and participate in the discussion.
527. The Delegation of the United States of America reiterated its concerns about the length of those SCCR meetings, and concurred with the suggestion of the Delegation of the Russian Federation that if there was to be an additional day, it should be only one day. The Committee was already committed to eight days for the SCCR/23 in 2011. A better way to handle it was to ensure a certain amount of time in the remaining days of the SCCR in November 2011 to hold discussions on the Chairman's work plan. The Delegation was against taking too many of those five remaining days for the issue of broadcasting organizations.
528. The Delegation of South Africa said that the solution was in the South African documents. The Delegation proposed three days for the meeting for focused discussion, and suggested deciding upon the nature of the platform. It also called for clarity on the objective and the platform for that working group discussion. The Delegation suggested allocating 11 days for the SCCR.
529. The Delegation of the United States of America indicated that it would not agree on a 11-day SCCR session.

530. The Delegation of Nigeria said there were comments that could not be dealt with in the Committee since there were issues that were not resolved. Having the meetings back-to-back could add to the cost and involve a longer time frame.
531. The Delegation of the European Union felt uncomfortable working in the SCCR for 11 days.
532. The Delegation of Brazil suggested going into informal consultations to try to solve some issues. It agreed with the Delegation of the European Union on the need of time to discuss the limitations for visually impaired persons at the next SCCR session.
533. The Assistant Director General of WIPO suggested having the next meeting along with the SCCR rather than a separate one in order to minimize cost. He noted that the SCCR had made considerable progress in informal consultation held in April 2011. That was not a working group but an informal consultation meeting where NGOs were present. He pointed out that the Chair's paper did not carry the same language as the South African paper. He quoted that the first paragraph that said the Committee agreed to continued discussion. The second paragraph was on the level of focused discussions, where there were certain actions about objective. The second paragraph talked of the focused discussions with the aim of making their recommendation to the 2012 General Assembly on the draft treaty and the scheduling of a Diplomatic Conference. He opined that the paragraph covered the essence of what was required. He suggested having increased time for the subject of broadcasting and suggested three plus five days.

**LIMITATIONS AND EXCEPTIONS: PERSONS WITH PRINT AND OTHER READING DISABILITIES (continuation)**

534. The Chairman announced that document SCCR/22/16 Prov 1. was ready for comments.
535. The Delegation of the European Union sought clarification on the changes made in Article C(5). It also sought further clarification on Article E which at the end read "without authorization of the copyright holder." Article C had previously a paragraph 4 which spoke on the principle of commercial availability at a reasonable price and a reasonable time and under national law exceptions. It noted that the Delegation of Japan had suggested moving up that provision to Paragraph 3. That change would make the provision only applying to Paragraph 2, as opposed to applying to the entirety of Article C. There was a further consequence of changing what used to be paragraph 5 into paragraph 4 in Article C. The Delegation asked the Delegation of Japan to clarify that matter as the Delegation of the European Union preferred to have a self-standing paragraph.
536. The Delegation of Japan suggested moving that paragraph to be consistent with Article D. However, if there was a preference for the original document, Japan was willing to accept that but wished to leave a record.
537. The Delegation of the European Union maintained its view that the principle was an important one, and paragraph C(4) enshrined a self-standing principle to be applied to Article C in its entirety. But if the Delegation of Japan would like to swap with Article D, the European Union could consider it.
538. The Delegation of India said that all its interventions had been reflected in the document, except in Article G. The manner in which Article G was presented the previous day was confusing, and the language of Article G should have been the reverse of what had been



proposed in the document. It should not be possible for rightowners to do away with such exceptions and limitations by virtue of private contracts. The Delegation then suggested the reading to be as follows: "The Member States/contracting parties shall/should in their national laws address relationship of contract law in a way that makes such exceptions and limitations immune from private contract so that such exceptions and limitations may not be taken away by the rightowners by entering in private contracts."

539. The Delegation of the United States of America agreed with the text presented by the Chair and proposed further consideration of the issues discussed.
540. The Delegation of South Africa suggested including the new paragraph that read "Desiring to harmonize and enhance national laws on such limitations and exceptions through an international framework consistent with the Berne Convention in order to facilitate access to knowledge in copyrighted works by persons with disabilities." It further suggested replacing the word "desire" with "need" in the sixteenth paragraph of the same preamble. The Delegation pointed out that its suggestions were reflected in the previous document, but not in the new document..

#### **PROTECTION OF AUDIOVISUAL PERFORMANCES (continuation)**

541. The Delegation of the United States of America said that the informal consultations held the previous day on Article 12 led to much progress but that progress had not been finalized. The Delegation suggested holding informal consultations among the same countries and regional coordinators to have a chance to advance further.
542. The Chair agreed to meet informally with the cosponsors of draft Article 12 and anyone else who had a contribution towards that.
543. The Delegation the European Union indicated that it could agree with the revised proposal of the Delegation of India, Mexico and the United States of America. The Delegation could go along on these proposals for Article 12, and go towards a Diplomatic Conference with the 19 Articles that were agreed already.
544. The Delegation of the United States of America stated that along with the Delegations of India and Mexico, the Delegation was very pleased to describe the final proposal on Article 12 relating to the transfer of rights. Following the presentation of the first convergence text prepared by the Delegations of India, Mexico and the United States of America, those delegations received thoughtful suggestions and comments both in plenary and in informal consultations from the African Group, the European Union, and Brazil. After having carefully reviewed those comments, the text has been finalized. It asked the Delegation of India to read the first sentence of the new Article 12 since the final convergence and final compromise was from the Delegation of India.
545. The Delegation of India read the first paragraph of Article 12 : "A contracting party may provide in its national law that once a performer has consented to fixation of his art performance, in an audiovisual fixation, the exclusive rights of authorization provided for in Article 7 to 11 of this Treaty shall be owned or exercised by or transferred to the producer of such audiovisual fixation, subject to any contract to the contrary between the performer and the producer of the audiovisual fixation, as determined by the national law."
546. The Delegation of Mexico announced that the second and third paragraphs of Article 12, were clarified to take into account the views expressed by the Delegation South Africa and by the Delegation of Brazil.

547. The Delegation of the United States of America added that the final text of the last sentence also included some wordings suggested by the African Group.
548. The Chair thanked the delegations for their efforts in coming up with that Article 12 and congratulated the different groups and delegations who gave their input.
549. The Delegation of Japan appreciated the efforts of the proponent for making that proposal. The Delegation had concerns whether Japan would go along with that Article. It interpreted Article 12 as expressly recognizing a range of possibilities for the consolidation of economic rights with the producer but did not interpret it as forbidding other arrangements permissible under the treaty.
550. The Delegation of the United States of America shared the views of the Delegation of Japan concerning the interpretation of Article 12.
551. The Delegation of the European Union pointed out that the Delegation had agreed with the drafting of Article 12 on the same understanding as the one expressed by the Delegation of Japan.
552. The Chair asked the Committee if it might be able to suggest the General Assembly in September to convene a Diplomatic Conference.
553. The Delegation of Venezuela (Bolivarian Republic of) indicated that it had just seen the agreement the delegations had reached. That day was a national holiday for the independence and therefore its government could not give its commitment now.
554. The Delegation of the United States of America pointed out that the agreement of that Committee for the new convergence text on Article 12 was only an agreement that the Committee should send the Article 12 forward to the General Assembly as part of a package to reconvene the adjourned Diplomatic Conference of 2000. It was not a commitment by the delegations to the Article in any sense beyond that.
555. The Delegation of the Russian Federation supported the proposal made by the Chair and congratulated all the delegations who have worked very hard on that issue. It was a unique opportunity to solve a problem that the Committee had since 1996. The Delegation called upon all the delegations to support the proposal to take a decision to convene a Diplomatic Conference.
556. The Delegation of China thanked the Delegations of India, Mexico and the United States of America and all the delegations interested in the Treaty on the protection of audiovisual performances for their hard work to reach a consensus document. It requested the Chair to ask the delegations to agree to submit the draft Treaty to the Diplomatic Conference or to submit it to the General Assembly.
557. The Delegation of the United States of America recalled that the 2000 Diplomatic Conference was suspended with the hopes that the final question of transfer of rights could be resolved. The Committee would be resolving that issue by reaching a decision on the text of Article 12 as resubmitted. The Committee could be sending to the General Assembly a recommendation that the General Assembly reconvene the suspended Diplomatic Conference with instructions to start with Article 12 as the remaining Article, the existing 19 Articles, and such further directions as the General Assembly would give the Diplomatic Conference.

558. The Delegation of South Africa, speaking on behalf of the African Group, endorsed the proposal and thanked the Delegations of Brazil, India, Mexico and the United States of America. It reiterated that the Committee should take the decision to recommend the General Assembly to reconvene the Diplomatic Conference.
559. The Delegation of China thanked the Delegation of the United States of America for its explanation and aligned itself on the position of the Delegation of the Russian Federation. That question has been pending for many years and the Committee should not miss the opportunity to solve that issue.
560. The Delegation of the United States of America welcomed the wonderful reception that that idea had received from so many delegations. The Delegation of from South Africa, speaking on behalf of the African Group, alluded to the path forward. It asked the Chair whether he would want to present that path forward at that time, or whether he would prefer to wait to discuss that during to the conclusions of the Committee. The Delegation would suggest the replacement of the draft conclusions.
561. The Delegation of Senegal expressed support for the statement made on behalf of Africa Group. Article 12 was really the essence of the Treaty. The Delegation thanked the Delegations of India, Mexico and the United States of America for their constructive work. The Committee should indeed now recommend to the General Assemblies to convene a Diplomatic Conference.
562. The Delegation of Venezuela (Bolivarian Republic of) stated that the Delegation would not oppose that proposal but it needed to consult with its capital. The Delegation indicated its frustration concerning the fact that the protection of audiovisual performances had been dealt with before the issue of visually impaired persons, which was not dealing with economic rights but with human rights. That was a very bad signal sent by the Organization, as a United Nations agency, and as part of the commitment of the United Nations to the development goals.
563. The Delegation of Angola expressed support for the position of the African Group. The Group had always supported the idea of retaining the 19 Articles agreed on in 2000. Since there was an agreement on the proposed Article 12, the Committee should move towards a Diplomatic Conference in order to conclude a Treaty rapidly.
564. The Delegation of Mexico thanked the Delegations of India and United States of America for the constructive work done to reach an agreement on Article 12. The delegations held consultations between the two sessions of the Committee to overcome divergences on that issue and on the issue of visually impaired persons. The progress had really broken the standstill which was undermining the work of the Committee on very important issues. The Delegation agreed with the Delegation Venezuela. It was important to address humanitarian human rights issues, in particular of countries in Latin-American region but it was also important to manage to achieve a better dialogue which had enabled the Committee to move forward with its work.
565. The Delegation of the United States of America appreciated the flexibility of the Delegation of Venezuela (Bolivarian Republic of) who had indicated that it would not oppose the Committee moving forward. The Delegation also wanted the Committee to succeed on the issue of copyright exceptions for persons with print disabilities. It indicated that the Delegation remained committed to the very important issue of copyright exceptions for persons with print disabilities.

566. The Delegation of Nigeria supported the statement made by the Delegation of South Africa on behalf of the African Group and looked forward to the convening of a Diplomatic Conference.
567. The Delegation of Kenya thanked the Delegations of India, Mexico and the United States of America for their excellent work and their tireless efforts and looked forward to the convening of the Diplomatic conference. It underlined the importance of having an international instrument protecting the audiovisual performers.
568. The Delegation of Brazil appreciated the work which had been carried out by the Delegations of Brazil, the United States of America, the European Union, the African Group and Mexico to propose a the text of an international instrument for the people with print disabilities. That issue remained a priority for the Delegation.
569. The Delegation of the United States of America indicated that the informal consultations had produced a proposal and proposed a text for the conclusions of the Committee.
570. The Delegation of Brazil agreed with the statement made by the Delegation of the United States of America.
571. The Delegation of India supported the statement read by the Delegation of the United States of America, and made some suggestions regarding the timing for agreed statements.
572. The Delegation of the United States of America pointed out that the intent was that Member States would have a period of time before the Diplomatic Conference to work on those agreed statements, to discuss and consult on them.
573. The Delegation of India proposed to replace the words “no earlier” with the words “no later” to give sufficient time to the delegations to consider the proposals submitted.
574. The Delegation of the United States of America suggested providing that the proposals shall be submitted no earlier than six months and no later than three months before the opening of the Diplomatic Conference.
575. The Delegation of Nigeria underlined the importance clarify that a Member State should not propose an agreed statement or a new proposal few days before the opening of the Diplomatic Conference.
576. The Delegation of the United States of America proposed to include in the conclusions the words “no earlier than six months and no later than one month before the opening of the Diplomatic Conference.”
577. The Delegation of Ecuador indicated that the proposal did not adequately encompass the need to solve the lack of exceptions for education, libraries and disabled persons in particular in the digital area. The Delegation proposed that space be made to include new language on exceptions or at least an agreed statement on that area.
578. The Delegation of Switzerland suggested submitting and discussing the proposed agreed statements during a Standing Committee to avoid risking another suspension of the Diplomatic Conference.
579. The Delegation of Turkey noted that Member States already committed themselves to discuss and consult on the subject matter.

## **OTHER MATTERS**

580. The Chair noted that there were no other matters to be discussed under item 11.

## **CLOSING OF THE SESSION**

581. The Chair presented the set of draft conclusions and submitted them for the consideration of the Committee.

582. The Chair thanked all for their efforts, noted that the Standing Committee unanimously had adopted the conclusions set out below and closed the session.

## **CONCLUSIONS**

### **Agenda**

1. The Committee agreed on changing the agenda order and including a new item related to the contribution of the SCCR to the implementation of the respective Development Agenda recommendations. Some delegations stated that the inclusion of the latter was temporary only at this session of the Committee preceding the General Assembly and should not set a precedent.

### **Limitations and Exceptions: Persons with print and other reading disabilities**

2. The Committee took note of two new documents, namely the comparative List of Proposals Related to Copyright Limitations and Exceptions for the Visually Impaired Persons and Other Persons with Print Disabilities, prepared by the Secretariat (SCCR/22/8); and the Draft WIPO Treaty on Exceptions and Limitations for the Persons with Disabilities, Educational and Research Institutions, Libraries and Archives; proposal by the African Group (SCCR/22/12), which revised previous proposal put forward in document SCCR/20/11.
3. The Committee thanked the proponents of all four substantive proposals for their sincere efforts to hold meaningful discussions in informal consultations to explore points of commonality and possible convergence among the four substantive proposals. Some Members who participated in those informal consultations released a "non-paper" which was later submitted as a "Consensus document on an international instrument on limitations and exceptions for persons with print disabilities" from a group of Member States (document SCCR/22/15). Members made comments and asked preliminary questions. A number of Members endorsed this document and signaled their interest in sponsoring it. On the basis of the above proposal and taking into account the various suggestions made by some Members, a "Proposal on an international instrument on limitations and exceptions for persons with print disabilities" was presented by a number of Members (document SCCR/22/15 Rev. 1).
4. Following further discussion, the Committee asked the Chair to prepare a Chair's text for an international instrument on limitations and exceptions for persons with print disabilities (document SCCR/22/16), which would constitute the basis for the future text-based work to be undertaken by the Committee in its 23rd session.

5. The Committee agreed to recommend to the WIPO General Assembly that Members of the Committee continue discussions regarding the Chair's document SCCR/22/16 with the aim to agree and finalize a proposal on an international instrument on limitations and exceptions for persons with print disabilities in the 23rd session of the SCCR, in accordance with the timetable adopted at the 21st session of the SCCR.
6. The Committee encouraged the stakeholders to continue the work of the Stakeholders' Platform.

#### **Limitations and Exceptions**

7. The Committee took note of the presentation made by the African Group of document SCCR/22/12 titled Draft WIPO Treaty on Exceptions and Limitations for the persons with disabilities, educational and research institutions, libraries and archives.
8. The Committee agreed that the item of limitations and exceptions will be maintained on the agenda of the 23rd session of the SCCR.

#### **Protection of Audiovisual Performances**

9. The Committee thanked the Secretariat for organizing Open-ended Consultations on the Protection of Audiovisual Performances in Geneva on April 13 and 14, 2011, with the mandate to examine new proposals from Member States. It also thanked its Chair, Mr. Ositadinma Anaedu from Nigeria. The report of this meeting was presented by the Delegation of Nigeria.
10. The Committee agreed that the Member States should recommend to the General Assembly that the General Assembly resume the suspended 2000 Diplomatic Conference with the understanding that the Treaty text should be finalized as: (a) the 19 Articles provisionally adopted, including the existing Agreed Statements; (b) the new Article 12 agreed to by consensus at session SCCR/22; and (c) three additional Agreed Statements to be drafted in relation to Articles 1, 2, and 15 to address specific concerns raised by Member States. The Delegation of the Bolivarian Republic of Venezuela agreed with the conclusions but reserved the right to review its decision on this item during the 2011 WIPO General Assembly.
11. These Agreed Statements are intended to reaffirm the Member States' commitments to the principles, objectives, and competition policy of the TRIPS Agreement; to clarify the relationship between the WPPT and this Treaty; to describe better those performers protected under the Treaty; and to clarify the relationship between Articles 13 and 15.
12. The Committee further agreed that the preamble to the Treaty will include one additional clause recognizing the importance of the Development Agenda.
13. Member States committed themselves to a period to discuss and consult on the text of such Agreed Statements and additional clause in the preamble. It was further agreed that such Agreed Statements and clause should be submitted no earlier than six months and no later than one month before the reopening of the Diplomatic Conference.

#### **Protection of Broadcasting Organizations**

14. The Committee thanked the Secretariat for organizing the informal consultations on the protection of broadcasting organizations in Geneva on April 14 and 15, 2011, and thanked its Chair Ms. Alexandra Grazioli from Switzerland, for presenting the report of this meeting.

The Committee considered and commented on the “Elements for a Draft Treaty on the Protection of Broadcasting Organizations” presented by the Chair of the Informal consultations (document SCCR/22/11), which sets out possible elements for a draft treaty and to advance discussions.

15. The Committee took note of the new draft treaty proposals presented by the Delegations of South Africa, Canada and Japan (document SCCR/22/5, document SCCR/22/6 and document SCCR/22/7, respectively).
16. The Committee also took note of the Conclusions of the Regional Broadcasting Signal Piracy Seminar for African countries, organized by the Government of South Africa and held in Johannesburg, South Africa, on June 6 and 7, 2011 (document SCCR/22/14).
17. The Committee reaffirmed its commitment to continue work, on a signal based approach, consistent with the 2007 General Assembly mandate, towards developing an international treaty to update the protection of broadcasting and cablecasting organizations in the traditional sense.
18. The Committee approved the Chair’s work plan as set out in the annex of these conclusions.
19. The protection of broadcasting organizations will be maintained on the agenda of the 23rd session of the SCCR.

#### **Contribution of the SCCR to the implementation of the respective Development Agenda recommendations**

20. The Chair stated that all statements made in relation to Contribution of the SCCR to the implementation of the respective Development Agenda recommendations would be recorded in the report of the 22nd session of the SCCR and they would be transmitted to the WIPO General Assembly in line with the decision taken by the 2010 WIPO General Assembly related to the Development Agenda Coordination Mechanism.

#### **Annex of the Conclusions:**

##### **Protection of Broadcasting Organizations – Chairman’s work plan**

1. To maintain the momentum regarding a draft treaty on the protection of broadcasting organizations and cablecasting organizations in the traditional sense, the Committee agreed to continue discussions on a signal-based approach consistent with the 2007 General Assembly mandate.
2. The following work plan is proposed:
  - 2.1 A two-day informal consultation on the protection of broadcasting organizations and cablecasting organizations will take place in connection with session SCCR/23. The exact dates will be determined by the WIPO Secretariat. The outcome of the consultation shall be reported to session SCCR/23. The modalities for further work will be agreed during session SCCR/23.
  - 2.2 The aim of this consultation will be to progress the work on a draft treaty with a view to making a recommendation to the 2012 WIPO General Assembly on the possible scheduling of a Diplomatic Conference.

- 2.3 The discussions will be open to the participation of all Members and observers of the SCCR.
3. The following documents shall form the basis of the discussions:
  - 3.1 Revised Draft Basic Proposal for the WIPO Treaty on the Protection of Broadcasting Organizations (document SCCR/15/2);
  - 3.2 Proposal on the Draft Treaty for the Protection of Broadcasting Organizations: Proposal by the Delegation of South Africa (document SCCR/ 22/5);
  - 3.3 Proposal on the Draft Treaty for the Protection of Broadcasting Organizations: Proposal by the Delegation of Canada (document SCCR/22/6);
  - 3.4 Comments on the Draft Treaty for the Protection of Broadcasting Organizations: Proposal by the Delegation of Japan (document SCCR/22/7);
  - 3.5 Elements of the Draft Treaty on the Protection of Broadcasting Organizations prepared by the Chair of the Informal Consultations on the Protection of Broadcasting Organizations held In Geneva on April 14 and 15 April 2011 (document SCCR/22/11);
  - 3.6 Any other document presented to the Committee.
4. Participants from developing countries should be financed in accordance with WIPO practices.

[Annex follows]



**ANNEXE/ANNEX****LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS****I. MEMBRES/MEMBERS****AFRIQUE DU SUD/SOUTH AFRICA**

Mashilo BOLOKA, Director, Broadcasting Policy, Pretoria

Simon Z. QOBO, Director, Bilateral Affairs, South Cooperation, International Affairs and Trade, Pretoria

Potelwa NOSISI, Counsellor, Economic Department, Permanent Mission, Geneva

Tshihumbudzo RAVHANDALALA (Ms.), First Secretary, Permanent Mission, Geneva

**ALGÉRIE/ALGERIA**

Nadia MOKRANI (Mme), directrice des affaires juridiques, Ministère de la culture, Alger

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

**ALLEMAGNE/GERMANY**

Jens STÜHMER, Legal Advisor, Federal Ministry of Justice, Berlin

Silke VON LEWINSKI (Ms.), Max-Planck-Institute, Munich

Heinjoerg HERRMANN, Counsellor, Permanent Mission, Geneva

**ANGOLA**

Damião João Antonio BAPTISTA PINTO, directeur, Direction nationale des spectacles et du droit d'auteur, Ministère de la culture, Luanda

Aguinaldo Guedes CRISTOVÃO, directeur, Ministère de la culture, Legal Office, Luanda

Makiesse KINKELA AUGUSTO, troisième secrétaire, Mission permanente, Genève

**ARGENTINE/ARGENTINA**

Rodrigo BARDONESCHI, Primero Secretario, Misión Permanente, Ginebra

**AUSTRALIE/AUSTRALIA**

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

George MINA, Assistant Secretary, Services and Intellectual Property Branch, Department of Foreign Affairs, Barton

Trudy WITBREUK (Ms.), Minister Counsellor, Deputy Permanent Representative, Permanent Mission to the World Trade Organization (WTO), Geneva

AUTRICHE/AUSTRIA

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

BARBADE/BARBADOS

Kevin Ardon HUNTE, Deputy Registrar (AG), Registrar of Corporate Affairs and Intellectual Property, St. Michael

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

BELGIQUE/BELGIUM

Gunther AELBRECHT, Legal Advisor, SPF Economie, Brussels

Marc THUNUS, Counsellor, Permanent Mission, Geneva

BOSNIE-HERZÉGOVINE/BOSNIA AND HERZEGOVINA

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Tomas BAERT, Second Secretary, Permanent Mission, Geneva

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\* 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.

III. ORGANISATIONS INTERGOUVERNEMENTALES/  
INTERGOVERNMENTAL ORGANIZATIONS

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

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

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ORGANISATION RÉGIONALE AFRICAINE DE LA PROPRIÉTÉ INTELLECTUELLE  
(ARIPO)/AFRICAN REGIONAL INTELLECTUAL PROPERTY ORGANIZATION (ARIPO)

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[End of Annex and of document]