

WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

Eighteenth Session
Geneva, May 25 to 29, 2009

REPORT

approved by the Committee

1. The Standing Committee on Copyright and Related Rights (hereinafter referred to as the “Standing Committee”, the “Committee” or the “SCCR”) held its eighteenth session in Geneva, from May 25 to 29, 2009.

2. The following Member States of the World Intellectual Property Organization (WIPO) and/or members of the Berne Union for the Protection of Literary and Artistic Works were represented in the meeting: Algeria, Argentina, Australia, Austria, Barbados, Belarus, Belgium, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Côte d’Ivoire, Croatia, Cuba, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Germany, Russian Federation, Finland, France, Ghana, Guinea, Haiti, Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Italy, Japan, Jordan, Kenya, Lebanon, Lithuania, Luxembourg, Malawi, Malaysia, Malta, Mauritius, Mexico, Morocco, Myanmar, Nepal, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Rwanda, Spain, Syrian Arab Republic, United Kingdom, Saudi Arabia, Senegal, Serbia, Slovakia, South Africa, Sudan, Sweden, Switzerland, Thailand, Togo, Trinidad and Tobago, Turkey, Ukraine, United States of America, Uruguay, Venezuela, Viet Nam, Yemen, Zimbabwe (91).

3. The European Community (EC) participated in the meeting in a member capacity.

4. The following intergovernmental organizations took part in the meeting in an observer capacity: United Nations Educational, Scientific and Cultural Organization (UNESCO), African Regional Intellectual Property Organization (ARIPO), Arab Broadcasting Union (ASBU), South Centre, World Trade Organization (WTO) (5).

5. The following non-governmental organizations took part in the meeting as observers: *Agence pour la protection des programmes* (APP), Asia-Pacific Broadcasting Union (ABU), *Asociación Argentina de Intérpretes* (AADI), *Asociación Internacional de Radiodifusión* (AIR), Association of European Performers' Organisations (AEPO-ARTIS), Association of Commercial Television in Europe (ACT), Association IQSensato (IQSensato), Central and Eastern European Copyright Alliance (CEECA), Centre for Performers' Rights Administrations (CPRA) of GEIDANKYO, Center for International Environmental Law (CIEL), *Centro Nacional de derecho de autor* (CENDA), Civil Society Coalition (CSC), Computer and Communications Industry Association (CCIA), Consumers International (CI), Electronic Frontier Foundation (EFF), European Broadcasting Union (EBU), European Digital Rights (EDRi), European Newspaper Publishers' Association (ENPA), European Visual Artists (EVA), *Fundação Getulio Vargas* (FGV), German Association for the Protection of Intellectual Property (GRUR), Ibero-Latin-American Federation of Performers (FILAIE), Information Technology Association of America (ITAA), International Affiliation of Writers' Guilds (IAWG), International Centre 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 Journalists (IFJ), International Federation of Library Associations and Institutions (IFLA), International Federation of Reproduction Rights Organisations (IFRRO), International Federation of the Phonographic Industry (IFPI), International Group of Scientific, Technical and Medical Publishers (STM), International Literary and Artistic Association (ALAI), International Music Managers Forum (IMMF), International Publishers Association (IPA), International Video Federation (IVF), Knowledge Ecology International, Inc. (KEI), Library Copyright Alliance (LCA), Max-Planck-Institute for Intellectual Property, Competition and Tax Law (MPI), National Association of Commercial Broadcasters in Japan (NAB-Japan), North American Broadcasters Association (NABA), Public Knowledge, Third World Network Berhad (TWN), Union of National Radio and Television Organizations of Africa (URTNA), World Blind Union (WBU) (48).

OPENING OF THE SESSION

6. Mr. Francis Gurry, Director General of WIPO opened the session. He thanked all the speakers and participants of previous day's information session. He thanked the Government of Mexico for Mr. Julio Carrasco Breton's mural painting installed in the WIPO lobby. He referred to a new document which was in the process of being distributed, concerning a proposal by the delegations of Brazil, Ecuador and Paraguay for a treaty on exceptions for the visually impaired. He also drew the attention of the Committee to some news that had appeared the previous week, one quoting him of having supported a treaty as a solution, and another report quoting him of having opposed such a treaty solution. He clarified that it was the task of neither himself nor of the Secretariat to propose or advocate any particular solution, as that was entirely left to the decision of the Member States. The task of WIPO was to facilitate a process which would produce the desired solutions. Any reporting of his position with respect to that matter should therefore be disregarded. He also clarified that the stakeholders' platform was not a substitute for the enabling legal framework with respect to

that particular question. The idea of the stakeholders' platform was to put into place operational and practical arrangements within the context of whatever enabling legal framework happened to exist or would exist in future at the national or international levels. The stakeholders' platform was concerned with making operational questions of access to published works on the parts of visually impaired persons.

ELECTION OF A CHAIR AND TWO VICE-CHAIRS

7. The Director General of WIPO noted that the regional group coordinators were still discussing the nomination for the two vice chairs, whose names would be proposed at a later stage. He advised the Committee to proceed with the election of the Chairman first.

8. The Delegation of the Russian Federation proposed the representative of Finland, Mr. Jukka Lieder, as Chairman of the Committee.

9. The Delegation of Serbia supported the previous proposal.

10. As there was no other proposal coming from the floor, Mr. Jukka Lieder was elected Chairman of the 18th session of the Standing Committee on Copyright and Related Rights. The Director General invited Mr. Jukka Lieder to preside over the meeting.

ADOPTION OF THE AGENDA OF THE EIGHTEENTH SESSION

11. The Chair invited the Committee to discuss Agenda item 3 related to the adoption of the Agenda of the 18th session.

12. The Delegation of Brazil informed the Committee that, together with the Delegations of Ecuador and Paraguay, it had put forward a proposal to discuss a treaty on exceptions and limitations. It further raised a procedural question as to whether the proposal could be discussed as Agenda item 5, or there was a need to add a new item 5(b) instead.

13. The Chair clarified that Agenda item 5 would be dealt with in two sub-parts, one part on the questions relating to the blind and visually impaired people, and the other part focusing on the general issue of limitations and exceptions.

14. The Standing Committee adopted the agenda of the session as contained in document SCCR/18/1.

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

15. The Chair related that the Draft Report of the SCCR/17 session had been distributed at the beginning of April 2009, and invited delegations to forward their modifications, if any, to the Secretariat for inclusion in the final report.

16. The Delegation of Algeria indicated that it would be forwarding to the Secretariat some corrections to paragraphs 70 and 82 with regard to its statements, as well as corrections for the list of participants.

17. The Delegation of the Islamic Republic of Iran reported an omission of some sentences in paragraphs 35 and 93 of the draft report and said that the corrections would be forwarded to the Secretariat.

18. The Delegation of Indonesia pointed out that the Delegation from India had been mistakenly enlisted under Indonesia.

19. The Secretariat requested the delegations concerned to submit corrections of their statements to the Secretariat by email to *copyright.mail@wipo.int* by the end of the week. A revised version of the draft Report SCCR/17 would be issued by the Secretariat in due course.

20. The Chair noted that with that reservation the Standing Committee had adopted the Report.

LIMITATIONS AND EXCEPTIONS

21. The Chair reminded the Committee that, as for Agenda item 5, various studies on limitations and exceptions commissioned by the Secretariat were already available. He further informed of the establishment of a stakeholders' platform by WIPO in order to facilitate arrangements to secure access for disabled people to protected works. A separate study on limitations and exceptions for educational institutions and distance learning was still under preparation and the results would be available before the next session of the SCCR. The Chair invited the Secretariat to present the Draft Questionnaire presented as document SCCR/18/3, and the Committee to discuss it.

22. The Secretariat indicated that document SCCR/18/3 contained 52 questions which covered a general part, provisions regarding free use, legal or statutory licenses, compulsory licenses, extended collective licenses and obligatory collective management, among others. The second part of the questionnaire went into greater details in the area of limitations and exceptions for education, since the questions regarding libraries and archives, and the visually impaired persons had already been dealt with in previous WIPO studies.

23. The Delegation of Yemen, speaking on behalf of the Arab Group, pointed out that documents should have been made available earlier so that delegations could be better prepared. The Group requested that the studies on limitations and exceptions for educational activities be available before the next meeting of the SCCR. It highlighted the need to take into account the particular needs of the people with disabilities in developing countries. The Delegation proposed Mr. Abdellah Ouadrhiri from Morocco as Vice-Chairman of the SCCR.

24. The Delegation of Mexico, in reference to the issues of the protection of audiovisual performances and the rights of broadcasting organizations, pointed out that the Committee had been discussing those issues for more than ten years and expressed confidence that it would make genuine progress on those subjects, as well as on the issue of limitations and exceptions.

25. The Delegation of the Czech Republic, speaking on behalf of the European Community and its 27 Member States, considered the international protection of audiovisual performances and the protection of the rights of broadcasting organizations as priority issues. On the issue of exceptions and limitations, the Delegation indicated that the European Community

legislation and national copyright laws of its Member States already provided a balance between the rights of copyright holders and owners of related rights on the one hand, and justified public interests on the other. The Delegation called for a practical and results-oriented approach fostered by the stakeholders' dialogue on the subject of exceptions for the benefit of the visually impaired persons. It also suggested that the topics of orphan works and resale rights be considered for the future work of the Standing Committee.

26. The Delegation of the Republic of Korea pointed out that the majority of the Member States had acknowledged that traditional broadcasting organizations needed proper protection in the digital environment akin to the protection granted by the WPPT. It supported maintaining that issue on the Agenda of the Standing Committee, and hoped that progress would be achieved towards convening a diplomatic conference for adopting a treaty on the matter.

27. The Delegation of South Africa said that, in facing challenges on access to knowledge, South Africa had adopted the adequate legislation, namely the Development Bill of 2008 and the Blind Act of 1998. It supported the discussions on exceptions and limitations regarding education, research, libraries, archives and people with disabilities, including visually impaired people and those with reading disabilities. Since the protection of audiovisual performances was also a concern, it supported further studies on the transfer of rights, contracts and remuneration for audiovisual performances with the hope of closing the gaps that remained on that matter. The Delegation remained committed to continue the discussions on the protection of the rights of broadcasting organizations with the hope of finding agreement on the object, scope and objective of the treaty as mandated by the General Assembly.

28. The Delegation of Pakistan reiterated that with regard to the issue of limitations and exceptions, and particularly with reference to improved access to the visually impaired and persons with reading disabilities, the World Blind Union's proposal represented a concrete step. Social, economic and political conditions of developing countries, such as low access to information and literacy rate and lack of infrastructure, should be kept in mind while incorporating limitations and exceptions into the national or international legal systems.

29. The Delegation of Germany, speaking on behalf of Group B, stated that the work of the SCCR was at a crossroads. WIPO had to play a leading role in the global discussions on copyright. While it was essential for the SCCR to achieve a positive outcome, it should not hesitate to examine new approaches for solutions. The Group strongly believed that any progress vitally depended on trust among WIPO Member States. Group B had been contributing actively and constructively to the deliberations on the international protection of broadcasting organizations and audiovisual performances. It also looked forward to an on-going and constructive dialogue on exceptions and limitations.

30. The Delegation of the Republic of Serbia, on behalf of the Group of Central European and Baltic States, expressed its support for further work on developing international protection of audiovisual performances and protection of broadcasting organizations in a positive and constructive spirit. It also believed that a common understanding of the special needs of visually impaired persons would contrive some conclusions.

31. The Delegation of China supported the SCCR in its effort to move towards a substantive outcome.

32. The Delegation of Argentina welcomed the forthcoming studies on exceptions and limitations for the benefit of educational activities, particularly distance learning institutions. With regard to the protection of audiovisual performances, it supported the exchange of information, the holding of seminars at regional and national level and consultations towards the international protection for artists and performers.

33. The Delegation of Nigeria supported the broadening of the scope of the questionnaire on limitations and exceptions. Exceptions and limitations represented important issues for developing countries, and they had to be holistically addressed. It supported the statement of the Delegation of South Africa on the protection of broadcasting organizations based on the object, scope and objective as mandated by the General Assembly.

34. The Delegation of Senegal, on behalf of the African Group, stated that it needed time to convey the draft questionnaire to the capitals for possible observations. It supported the preparation of the studies on limitations and exceptions for educational activities, including distance learning and its cross-border aspects, particularly in developing countries and least-developed countries. With regard to the stakeholders' platform, the African Group took note of the Interim Report and welcomed the progress achieved. The Group hoped that the creation of two separate subgroups, namely the trusted intermediaries and the technology subgroups, would not only enable the achievement of a consensus within the Group, but also the definition of practical solutions regarding the needs of the blind, visually impaired, and people suffering from other reading disabilities. All efforts should be made to enable an effective participation of stakeholders from developing and least-developed countries in the above platform.

35. The Delegation of Morocco fully supported the statement made by the Delegation of Senegal on behalf of the African Group. With regard to audiovisual performances, it supported the organization of consultations at regional and local levels in order to achieve further progress. As to the protection of broadcasting organizations, it supported an objective and constructive discussion on the topic bearing in mind the technological changes and the balance among all stakeholders' interests.

36. The Delegation of Chile stated that exceptions and limitations played a fundamental role in building a balance within the copyright system. The work of the SCCR could have a direct impact on the quality of life of millions of people around the world, regarding both the stimulus of creative activities and the legitimate access to cultural goods. It noted that a proposal had been made in a previous session of the SCCR, namely the holding of an open-ended forum on technologies and exceptions and limitations, which had not been carried out yet during 2009. It proposed the organization of an information meeting during the following SCCR session to exchange extensive information regarding exceptions and limitations, particularly on disabilities, including visual reading impairments.

37. The Delegation of Greece asked whether document SCCR/18/2 which contained supplementary information on WIPO studies on limitations and exceptions was going to be discussed after the draft questionnaire.

38. The Chairman stated that an important series of general observations had been concluded and thanked all delegations who had made the statements. Document SCCR/18/2 offered supplementary information on the WIPO studies on limitations and exceptions from Argentina, Chile, Colombia, Russian Federation, Greece, and Ecuador. He clarified that interventions concerning the special needs of the visually impaired persons should be postponed to a subsequent part of the deliberations regarding Agenda item 5. He opened the floor to discuss the issue of limitations and exceptions in general terms including education, libraries, archives, museums, and also the impact of technology on the access to protected materials. The most important task was to provide the Secretariat with sufficient comments or suggestions concerning the questionnaire so as to launch it as soon as possible.

39. The Delegation of Chile sought clarification about whether it had to speak first about the questionnaire and then about other documents, such as the supplementary information and the stakeholders' platform interim report.

40. The Chairman proposed to keep the debate on Agenda item 5 in two parts, namely the general area of limitations and exceptions, including the questionnaire and also the document on supplementary information; and the limitations and exceptions related to the special needs for the visually impaired people.

41. The Delegation of Chile, referring to the document on supplementary information, pointed out that Chile was working on amending its national copyright law with the aim of including a new complete section on exceptions and limitations. As to the questionnaire, it recalled that the mandate of the previous SCCR session specifically included a broader list of exceptions and questions regarding reverse engineering, security copies, support copies, and exceptions regarding temporary copies and Internet service providers liability. Other examples of exceptions could be incidental uses, judiciary and legislative uses, exceptions regarding exhaustion of rights and the right to make quotations. It noted that the questions regarding educational purposes were the most detailed, while the questions on disabilities and libraries were narrower. It believed that questions on the latter should be further developed because the questionnaire had to be self-contained. It cited the experience of the Asia-Pacific Economic Cooperation (APEC) Forum in which a survey of more than 100 questions on limitations and exceptions had been answered without any problem by national authorities.

42. The Delegation of Brazil recalled its proposal made in a previous SCCR session together with Chile, Nicaragua and Uruguay regarding exceptions and limitations in general. It agreed with the Delegation of Chile regarding the need for a self-contained and comprehensive questionnaire. The Delegation suggested that the formulation of the questions should stimulate more analytical and not purely factual responses.

43. The Delegation of Colombia highlighted the importance of the various studies delivered by WIPO on the issue of limitations and exceptions. A specific questionnaire could help investigate the differences among national laws and could assist the Committee in establishing clear guidelines regarding the flexibilities of international treaties on that topic.

44. The Delegation of the United States of America pointed out that, regarding the questionnaire, it was difficult to narrow choices down into a check-the-box format when its national law comprised a rather extensive statutory and case law regime concerning limitations and exceptions. The Delegation asked whether there would be a comment period to modify the questionnaire in a concise and precise way. With that, the Delegation did not intend to associate itself with proposals that would substantially widen the categories of the questionnaire.
45. The Delegation of Mexico suggested that the questionnaire clearly identify the country, name and contact information of the answering person.
46. The Delegation of the Russian Federation informed the SCCR that a modification of the Civil Code, dealing with the issue of limitations and exceptions, had come into force on January 1, 2008. The questionnaire should provide the possibility for those who answered it to make relevant comments.
47. The Delegation of Algeria supported the statements made by the Delegation of Senegal on behalf of the African Group. More time was needed to consider the draft and communicate comments to the Secretariat. The results of the questionnaire could be presented in a summary on national limitations and exceptions. As to the stakeholders' platform, participants from developing countries should also take part in it following an inclusive and transparent approach.
48. The Delegation of Japan stated that the inclusion of other items in the questionnaire could be an obstacle to the exercise.
49. The Delegation of the Czech Republic, on behalf of the European Community and its 27 Member States, asked about the deadlines to answer and approved the questionnaire.
50. The Delegation of Australia stated that the questionnaire on limitations and exceptions would provide a valuable addition to the Committee's work, which should remain focused and practical. More time was required in order to comment on the format and content of the questionnaire. It was noted that 52 questions was a substantial number when government resources were already stretched, but the Delegation would endeavor to give full and helpful responses. The Delegation would not wish to provide analysis or comment on national laws which had been passed by the Australian Parliament, as that task was more appropriately left to commentators.
51. The Delegation of Chile noted that the draft questionnaire was very relevant, and that it would be useful to set a deadline for comments. The question was not whether the questionnaire was short or long, but to obtain valid information of positive value to the SCCR. While the studies prepared by the Secretariat were very useful, they were limited in terms of topics and limited to examining a few countries. The questionnaire should examine the state of the art, including issues presently under discussion in developed and developing countries. If 180 Members could complete the questionnaire, the information provided would be useful for the Secretariat, for Chile and for all Members.
52. The Delegation of India referred to a national conference that had been held over two days in India on the subject of limitations and exceptions, which had proven very useful. It was suggested that the questionnaire should be expanded to include social and cultural exceptions. In that context, support was expressed for the statement made by the Delegation

of Chile, for inclusion of issues such as Internet service provider liability and reverse engineering in the questionnaire. It was suggested that a specific question should be included: “Does your copyright law include any other limitation and exception relating to any area not covered in the above questionnaire? Yes/No. If yes, please specify clearly the area.”

53. The Delegation of Chile noted that it had omitted to mention its support for the statement made by the Delegation of the United States, such that the questionnaire should leave space for additional information, particular for countries where jurisprudence was a primary source of exceptions and limitations.

54. The Delegation of Italy stated that, as it had only recently received the questionnaire, it was not able to comment on its content. The questionnaire should be concise. It was noted that almost all the questions dealt with legislation while, in many countries, limitations and exceptions were not contained in specific legislation, but were settled by administrative acts, practices and contractual arrangements. The Secretariat was accordingly invited to revise the wording of the questionnaire. With reference to the statement made by the Delegation of the Czech Republic, information was sought as to the deadline for approval of the questionnaire and for response.

55. The Chair noted that Members had posed questions about the deadline for submission of comments, and questions about the level of precision and detail in the questionnaire. With reference to the second part of Agenda Item 5, reference was made to the special needs of disabled persons, including the visually impaired. A number of studies had been prepared on that subject, including a new one presented at the last session of the Committee, and information sessions had been held. At the present Committee meeting, an Interim Report had been presented by the Secretariat on the stakeholder platform mechanism, and the proposal by Brazil, Ecuador and Paraguay relating to the draft treaty of the World Blind Union (Document SCCR/18/5). Discussions should begin on the issue of the stakeholder platform.

56. The Delegation of the United States of America informed the Committee that the Library of Congress and the Patent and Trademark Office (USPTO) had held helpful informal meetings or telephone calls with a cross-section of stakeholders to gather information about experiences with the copyright limitations for the blind or other persons with disabilities. Those preliminary discussions revealed that stakeholders had a range of nuanced views on the efficacy of current efforts to provide access to copyrighted works. It was confirmed that there were multiple, inter-related challenges when it came to providing access to copyrighted works for the blind or other persons with disabilities. Those factors included the application of copyright law and disabilities laws, but also economic factors, factors relating to technical standards and formats, factors related to coordination and best practices, and the promise of new technologies and new business models. Other preliminary observations were: First, the scope of copyright protection was one factor among many that affected the availability of content in accessible forms. Second, not surprisingly, there was a strong preference for content in digital format, not only because it could be easily reproduced and distributed, but because it could be made available with greater functionality. Third, not all digital formats were compatible and interoperable. Although that problem was being addressed through the promotion of standards (including the DAISY Consortium’s .xml format), much work remained to be done. Digital rights management (DRM) was used to prevent high levels of infringement, but also sometimes interfered with access to copyrighted works by blind and visually impaired persons. In its national law, the United States of America had been able to address that problem with a regulatory exception to the prohibition on the act of

circumventing access controls. Fourth, the critical issue of the relatively high costs associated with producing accessible copies was highlighted. Its country produced a great number and variety of accessible products, but such levels of production were made possible through governmental and/or private charitable subsidies. Fifth, there were willing buyers and willing sellers in the market for licenses to create accessible content. Despite such signs of possible market-based solutions, awareness was raised of complicated rights clearance issues, concerns about downstream infringement, and other complex market conditions.

57. The Delegation of Greece provided information regarding the national legislative framework on exceptions and limitations on the reproduction of copyright works for the benefit of the blind and deaf-mute, and extension of such arrangements to other categories of persons with disabilities as shown in document SCCR/18/2.

58. The Delegation of Mexico informed that its country had a federal law on copyright which clearly foresaw exceptions and limitations. The regulation of the Law stipulated that it was possible to reproduce complete works or part of works, of phonograms, videograms and performances, or editions, with the exclusive view of making it more accessible to the blind or the deaf, including the translations or adaptations to specific languages to communicate those works to the aforementioned people.

59. The Delegation of Nigeria lamented that the representatives of both rightsholders and the visually impaired sector from developing countries had not taken part in the stakeholders' platform. It supported all initiatives that would effectively and readily bring information and knowledge facilities to the doorsteps of the disabled and visually impaired persons all over the world. Intellectual property should be one of the many vehicles that could be used to achieve that aim. WIPO and the SCCR were the right avenues for articulating the intentions and proposals for obtaining the desired outcomes towards empowering the disabled and the visually impaired in their aspirations to continue to gain access to information and knowledge for use in their daily lives. It urged that discussions on exceptions and limitations be reflective of the provisions of the WIPO Development Agenda, particularly those on flexibilities, norm setting and public policy issues.

60. The Delegation of Chile informed the Committee that a recent study in Chile showed that 4 % of the total population or one out of twenty-five people, had some kind of visual disability, with women being the most affected. With regards to the levels of education, the study showed that only 2.5% of the visually impaired had been able to finalize their secondary education level, and around 80% of that population did not have any kind of formal education or qualification. The outcome of the study showed that it was clear that the use of technology was very scarce for that sector, for example 8.3% of the population said that they used a computer and only 4.1% of that disabled population said that they used the Internet. That situation should be taken into account when looking at the links that existed between limitations and exceptions to copyright and the use of technologies. The Delegation informed the Committee that a specific draft provision had been incorporated in the amendment of the Chilean Copyright Law regarding exceptions for those with visual and hearing impairments.

61. The Delegation of Czech Republic, speaking on behalf of the European Community and its 27 Member States, believed that exceptions and limitations were necessary to maintain an appropriate balance between copyright and related rights protection and the justified public interest. The list of exceptions and limitations, especially those found in the Directive on Copyright in the Information Society of 2001, was a testimony to the balanced approach within the European Union. All its Member States made use of the option to provide for

exception for visually impaired persons and those with other disabilities and allowed educational establishments, libraries, museums and archives to carry out certain acts of reproduction and communication to the public of protected materials for the purpose of teaching and research. It supported the work of the stakeholders' platform which was seeking to develop practical and industry-led approaches to benefit the visually impaired people. The Delegation was convinced that the protection granted to copyright and related rights in the existing treaties strike a balance between the rights of copyright holders and owners of related rights on the one hand, and the public interest on the other.

62. The Delegation of Germany, speaking on behalf of Group B, stated that the existing international treaties were designed to provide a degree of flexibility which was necessary for finding adequate solutions for large varieties of national needs. The issue of the needs of visually impaired people should be discussed with the background of existing WIPO-administered treaties and TRIPS and towards finding an effective, practical and timely solution for all. It praised the work of the stakeholders' platform and expressed confidence that its work would lead to positive results. It also supported the proposal made by Brazil, Chile, Nicaragua and Uruguay in a previous session, namely the first three phases of the presented work plan. Finally, it stressed that it would be useful to examine existing national legal systems and models of protection so as to take further steps regarding those different phases.

63. The Delegation of Serbia, speaking on behalf of the Group of Central European and Baltic States, supported the continuation of the Committee's work in analyzing exceptions and limitations of copyright and related rights in the digital environment.

64. The Chair invited the Secretariat to present the Interim Report of the Stakeholders' platform (document SCCR/18/4).

65. The Secretariat reported that, at the end of the 17th SCCR session, Member States had requested WIPO to establish a stakeholders' platform to discuss the issue of how to facilitate arrangements to secure access to protected works to disabled persons. Following that mandate, the Secretariat had organized two meetings of that platform and invited major stakeholders to participate in those meetings, namely rightsholders and the visually impaired persons sector representatives. The idea was to discuss the main concerns, needs and the suggested approaches regarding that specific goal of how to facilitate access to protected works. The first meeting took place at WIPO's Headquarters in Geneva on January 19, 2009, with the idea of having a first exploratory meeting. The Secretariat identified eight main points as elements of possible solutions. One of them was the enabling legal regime and other two additional ones were the issues of trusted intermediaries and technology. The second meeting of the platform took place in London, in the framework of the London Book Fair. In that meeting, the stakeholders agreed that any discussion on the enabling legal regime belonged to WIPO Member States and should take place in the framework of the SCCR. Another decision of that group of stakeholders was to create two subgroups that focused their work on the issue of trusted intermediaries, and the issue of technology. The trusted intermediaries' subgroup was currently developing a prototype that would be completed possibly by the end of July 2009, and tested by the end of that year. The technology group had presented a funding proposal which was in Annex III of that document. With that document, the Secretariat wanted to give an update of the work carried out by that platform, following the mandate given the previous November. The Secretariat sought the approval of the Committee on the specific actions to be undertaken, as well as the approval of the presentation of a second report at the next session of the SCCR.

66. The Director General of WIPO clarified that the stakeholders' platform was concerned with the operational and practical arrangements to improve access to protected works. The Interim Report had been prepared under the responsibility of the Secretariat rather than the stakeholders themselves. The Director General said that the stakeholders might however wish to make their own comments.

67. The Delegation of Senegal, speaking on behalf of the African Group, welcomed the work within the framework of that platform but requested taking all the necessary steps to allow for an effective participation of the stakeholders of developing countries and the least-developed countries.

68. The Delegation of the United States of America stated that the establishment of a stakeholders' forum within WIPO could play a key role in facilitating the international movement of accessible copyrighted works.

69. The Delegation of New Zealand was particularly pleased to see that the important issue of trans-border transfer of accessible copies was specifically addressed at those meetings. The Interim Report highlighted that the issue was very complex, not only because there were different needs and concerns but also because of the various technical complexities. The Delegation said that any solution was therefore likely to be equally complex and consisted of different elements, covering different aspects and would take different forms. The Delegation stressed the importance to remain open-minded in that respect and fully support the work of the stakeholders' platform.

70. The Delegation of Brazil thanked the Secretariat for the report on the stakeholders' platform, and stated that it was still examining the report in order to make observations later.

71. The Delegation of Chile supported the initiative and the moderating role that WIPO was playing in that stakeholders' platform, and thanked the Director General for his clarifications that other reports would be taken for discussions in the next SCCR.

72. The Delegation of Egypt appreciated the preparation of the Interim Report as a good effort towards reaching a consensus on that important matter. The Delegation stressed the important issue of representation, as raised by the Delegations of Senegal on behalf of the African Group, the Delegation of Yemen, on behalf of the Arab Group and the Delegation of Nigeria. The Delegation pointed out that Annexes I and II of the document, which listed the names of participants, were primarily based on particular countries and organizations that sought to present global views headquartered in developed countries. It stressed the need for inclusion of representatives of developing countries in order to reflect their interests. The Delegation proposed the holding of the next meeting of the platform in a developing country in the African or Arab region. As for the proposal to prepare a joint draft project for the next donor conference at WIPO, the Delegation sought more information on what that would entail. The Delegation also drew attention to paragraph 11 on page 5 where it was mentioned that a time frame for the work of the stakeholders' platform was critical in order to avoid a lengthy process and to ensure that its deliverables were met. The Delegation sought clarification if there were suggestions about that time frame.

73. The Director General clarified that the proposal of the Donor Conference was still in an evolving form, but the project dealt with the promotion of access to reading materials for visually impaired persons in selected African countries. He hoped that, after the Conference, the donation of funds could help to advance the project. On the time frame, the Director

General said that it was for the stakeholders themselves to work out on what was feasible for them to deliver in terms of arrangements. The stakeholders' platform had been initiated by and mandated by the SCCR and therefore the intention would be to report regularly to the committee to give the opportunity to Member States to comment on it and to suggest different approaches or even modification of a time frame. He noted that the platform had been going for a period of less than six months.

74. The Delegation of Colombia welcomed the stakeholders' platform document. It supported the continuation of the work, particularly through two working sub-groups.

75. The Delegation of Uruguay concurred with the concerns expressed by the Delegation of Egypt in organizing the meetings of stakeholders' platform in developing countries.

76. The Delegation of South Africa concurred with the thoughts expressed by the Delegation of Senegal, on behalf of the African Group, and the Delegation of Egypt, in terms of participation of developing countries and least-developed countries. It enquired on who would be invited, how the stakeholders would be invited, and what funding options would be available for those from developing and least-developing countries who wanted to attend the stakeholders' platform meetings.

77. The Director General mentioned that on the part of the stakeholders representing the visually impaired persons sector, the World Blind Union (WBU), as well as the Daisy Consortium, which dealt with technology matters for the blind and the dyslexic, together with the International Federation of Library Associations and Institutions (IFLA) had been invited. On the rightsholders' side, there was the International Publishers Association (IPA) and the International Federation of Reproduction Rights Organizations (IFRRO), among others. Other publisher organizations were also represented. Those identified stakeholders operated at the international level and had taken part in the platform as self-funded participants. He also said that the Secretariat would explore how it could facilitate the participation of stakeholders from developing countries, as no WIPO funding arrangement had been foreseen so far.

78. The Delegation of Algeria made reference to paragraphs 6 and 9 in document SCCR/18/4 Interim Report of the Stakeholders' Platform. Given the existing digital divide, the Delegation said it would be timely and appropriate to give priority to access to traditional works and not electronic works. The Delegation further stressed that 90% of the visually impaired lived in developing countries and that access of the visually impaired to protected works was a matter linked to development. The Delegation said that it was clear that the platform should meet in a developing country next time and suggested an African country as the venue.

79. The Delegation of India expressed its interest in consulting with its national stakeholders, especially on the technological aspects of accessible formats, as well as the cultural and different language needs in India.

80. A representative of the International Publishers Association (IPA) said that the IPA as a participant invited to attend both meetings of the stakeholders' platform, expressed its profound gratitude for the hard work of the WIPO Secretariat. The platform report did not accurately reflect the amount of time that stakeholders had spent discussing how to make the development aspect visible in their work. IPA represented some 65 member associations in some 58 countries including Morocco, Kenya, Sudan, Nigeria, South Africa, Egypt and many

other developing countries. It represented the publishing industry of the world and not just the non-developed world. The representative from WBU, Mr. Chris Friend, also organized works for Sightsavers International and had travelled extensively in Africa, and was aware of many of the issues in the developing world. As both organizations had limited funds, IPA would like to know about any opportunity to fund the participation of rightholders with experience from the developing world in the next meeting of the platform.

81. A representative of the World Blind Union (WBU) said that it represented a coalition of four international bodies with tremendous penetration into the visually impaired community: the World Blind Union itself, the Daisy Consortium, IFLA and the International Council of Educators for the Visually Impaired. The visually impaired sector believed that the stakeholders' platform was not a political forum, but an operational one where participants brought expertise to address complex problems. The rightholders and the visually impaired sector representatives had been self-funded so far and that was the obvious reason why there had been no developing country representatives attending the stakeholders' platform meeting. WBU hoped that the SCCR would facilitate the means to provide a funding for its representatives if the meeting took place in a developing country.

82. The Chair indicated that the last part under Agenda item 5 was the proposal by Brazil, Ecuador and Paraguay relating to limitations and exceptions. He invited the proponents to present it and the government delegations to have an exchange of views. The floor would be open on all the substance under Agenda item 5 to the intergovernmental and non-governmental organizations.

83. The Delegation of Brazil stated that the Delegations of Brazil, Ecuador and Paraguay had put forward a proposal for a draft treaty for the visually impaired persons and for other people with reading impairment or reading disabilities. The text had been prepared by WBU, and it was meant to serve as a basis to begin an in-depth discussion with a view to establishing a multilateral legal framework in that field. The text was designed to be a complement to other initiatives that had been taken in that field. The proposal was an example of norm-setting activities in the area of exceptions and limitations listed in document SCCR/16/2, presented by Brazil, Chile, Nicaragua and Uruguay during the 16th session of the SCCR. The proposal did not intend to postpone the debate on limitations and exceptions for libraries and archives, educational activities but to stimulate technological innovations. Those issues should continue their normal course on the basis of studies prepared, or about to be prepared, by the Secretariat. The draft treaty was proposed for three reasons: First, the fundamental consensus in the international community on the need to guarantee for the visually impaired the right to participate in cultural life of the community, to enjoy the arts and to share in scientific advancement, based on the Universal Declaration of Human Rights of 1948, and the Convention on the Rights of Persons with Disabilities. Second, a considerable amount of national legislation with varying levels of specificity already foresaw exceptions and limitations for the benefit of the visually impaired. Some countries, especially developed countries, had considerable experience in applying those exceptions, including relevant case law and practical experience in their implementation. Third, after more than 100 years of international negotiations, the international copyright system had achieved a degree of conceptual maturity that enabled it to develop a concrete and precise instrument to address the needs of the visually impaired. The time was ripe for WIPO to fulfill its mission as a specialized agency in that respect. According to the World Health Organization (WHO), there were around 314 million blind persons and visually impaired persons in the world and fewer than 5% of those individuals had access to the printed word. Finally, the Delegation

stressed that the proposal presented in document SCCR/18/5 was not set in stone and a political will and a pragmatic spirit were needed to continue the negotiations.

84. The Delegation of Ecuador supported the Delegation of Brazil. The very fact that a treaty for persons with reading disabilities was examined should be seen as a step forward in the working program of the SCCR as it represented an example of standard-setting for copyright by limitations and exceptions with the view to improve access to knowledge. It was necessary to extend the benefits of the treaty to all persons with disabilities, including reading disabilities, and people with long-term physical, mental, intellectual, sensorial disabilities. The success of intellectual property protection depended on a balanced limitations and exceptions, including the respect of other human rights. The transfer among jurisdictions of works in accessible formats was a key element to allow people with disabilities to have access to information and communication on equal footing with other people with no disabilities.

85. The Delegation of Paraguay was very pleased to co-sponsor the initiative for a draft treaty on exceptions and limitations to copyright for people with visual disabilities. It was clear that the proposal would need to be expanded to other groups with special needs in the future. It was highly important to take into account the recommendations of the WIPO Development Agenda when debating the proposal.

86. The Delegation of Uruguay stated that the Council of Copyright of Uruguay supported the initiative to open negotiations of a treaty on exceptions and limitations that brought a solution to the needs of people with visual impairments regarding their access to knowledge and culture. Existing international conventions were not satisfactory as they did not look particularly at the needs of people with reading disabilities and did not facilitate the sharing of accessible content across boundaries.

87. The Delegation of the Russian Federation supported in principle the proposal in document SCCR/18/5.

88. The Delegation of Iran stated that the WIPO studies on limitations and exceptions were being studied in detail in its country, as well as the questionnaire received from the Secretariat. The present and future work of the SCCR would lead to a better understanding of different national legal systems regarding the limitations and exceptions, including those for disabled and visually impaired persons.

89. The Delegation of Senegal spoke in its national capacity and sought clarification with regard to the proposed draft treaty. The feasibility of the task in Article 10(a), which related to the database on availability of works, was uncertain given the extent of the existing international repertoire. Article 11(a) appeared unclear as to whether it was possible to establish a mechanism for determining the remuneration for commercial exploitation. It was suggested that publishers, who had a professional experience in that field, should be involved in such an exercise. As to Article 12, it was unclear at what moment a work was orphan. Article 16, described “lawful access” as “access provided by or with the permission of the copyright owner or through other legal means.” The Delegation asked whether it would be more appropriate to replace that text by the following: “access provided by or with the permission of the owner of the copyright or related rights or through other legal means.”

90. The Delegation of Germany, speaking on behalf of Group B, thanked the Delegations of Brazil, Ecuador and Paraguay for their proposal, which was a valuable contribution to the deliberations on the needs of the blind and visually impaired persons. The proposal would be

studied carefully and with an open mind, but deliberations regarding any instrument would be premature at the present stage. The issues were complex and included a mix of economic, technical, business and legal considerations. The solutions were therefore equally complex.

91. The Delegation of Nigeria remained open to the proposed treaty as it was also open to the consideration of all matters in relation to the regime of limitations and exceptions in an inclusive and pragmatic approach.

92. The Delegation of Cuba said that the proposal of Brazil, Ecuador and Paraguay was compatible with other treaties which had provisions on exceptions and limitations and would give greater access to visually impaired people and other people with reading impairments. The Delegation also welcomed the report on the stakeholders' platform.

93. The Delegation from Chile fully supported the proposal of Brazil, Ecuador and Paraguay, which represented an excellent basis to discuss the scope of a treaty containing measures to guarantee access to culture and information for visually impaired people. It was consistent with and complementary to what the Delegation of Chile had proposed in 2004.

94. The Delegation of Senegal indicated that the African Group had taken note of the proposal for a draft treaty presented by Brazil, Ecuador and Paraguay and reiterated its preference for an overall and inclusive approach in connection with the recommendations contained in the WIPO Development Agenda.

95. The Delegation of the Dominican Republic welcomed the presentation of the proposal by Brazil, Ecuador and Paraguay. Any initiative that facilitated the access to content of the visually impaired should be discussed by the SCCR.

96. The Delegation of Switzerland requested the elaboration of documents on national solutions on exceptions and limitations. The Swiss Copyright Law did contain provisions for people with disabilities. The Secretariat was urged to consider composing a document presenting existing national exceptions and limitations with a special focus on solutions for visually impaired people.

97. The Delegation of El Salvador fully supported the draft treaty. The proposal aimed at ensuring equal access to communication and information by people with disabilities.

98. The Delegation of the Czech Republic, speaking on behalf of the European Community and its 27 Member States, thanked Brazil, Ecuador and Paraguay for their proposal. There had not been enough time to study the document and to conduct proper consultations with all the stakeholders in the respective capitals. Full support was given to the statement of Group B as presented by the German Delegation.

99. The Delegation of Argentina supported the initiative to negotiate a treaty on exceptions and limitations based on the text presented in document SCCR/18/5. The issue was of particular interest in Argentina as it linked to the Development Agenda of WIPO. It recalled that Article 30 of the Convention on the Rights of Persons with Disabilities, ratified by Argentina in 2008, provided that the States Parties would take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights did not constitute an unreasonable or discriminatory barrier to access to cultural materials by persons with disabilities.

100. The Delegation of Serbia, on behalf of the Group of Central European and the Baltic States, welcomed the proposal of a draft treaty under consideration. The issue was very complex and it was necessary to dispose of more time for additional consultations with stakeholders in the capitals.

101. The Delegation of Japan said it was fully committed to facilitating access to knowledge for the visually impaired persons. A partial amendment to the Japanese Copyright Law was being considered which included measures to broaden copyright limitations regarding information access for people with disabilities. The Delegation welcomed the proposal of Brazil, Ecuador and Paraguay but said it was too early to comment it without a previous analysis.

102. The Delegation of China indicated that time was required to further study the draft questionnaire. The stakeholders' platform was a good mechanism and its progress would be monitored closely. The Copyright Law and the Law on Information and Network Distribution of China included provisions on limitations of rights with regard to visually impaired people. The draft convention proposed in document SCCR/18/5 was a very important document for the promotion and protection of these groups' rights.

103. The Delegation of Egypt supported the statement made by the Delegation of Senegal, on behalf of the African Group, in relation to the right of access by people with disabilities, including the blind, visually impaired and other reading disabled persons. It advocated the adoption of a global approach that included all issues pertaining to guaranteeing access to knowledge, educational uses, research and technology transfer, as provided by the WIPO Development Agenda recommendations.

104. The Delegation of Malaysia thanked the Delegations of Brazil, Ecuador and Paraguay for their proposal which had to be viewed from a humanitarian perspective and should not to be influenced by economic and political considerations. The proposal would require further analysis by local stakeholders.

105. The Delegation of Morocco noted that the stakeholders' platform was a mechanism which would enable progress in facilitating access by the visually impaired, but representatives from developing countries had to be included in its discussions.

106. The Delegation of Costa Rica fully supported document SCCR/18/5 and the negotiation of a treaty to ensure that blind people and others with visual impairments could have access to all types of works.

107. The Delegation of South Africa thanked the Delegations of Brazil, Ecuador and Paraguay for their proposal. The norm-setting process in the area had to be conducted with a holistic approach taking into consideration the WIPO Development Agenda recommendations.

108. The Delegation of Australia stated that the treaty proposal would provide useful impetus to the Committee's work to find appropriate and practical solutions to the needs of the blind, visually impaired and other reading disabled persons. Domestic consultations would be conducted at national level to contribute constructively to future international discussions. Australian copyright law addressed the needs of people with disabilities and included extensive statutory licenses and exceptions which were consistent with the Berne three-step

test. The proposal in document SCCR/18/5 would complement other initiatives underway such as the stakeholders' platform.

109. The Delegation of Colombia welcomed the proposal of the Delegations of Brazil, Ecuador and Paraguay. A submission would be made to the Colombian Congress to amend the Copyright Law to include limitations and exceptions relating to concrete disabilities. Within the existing international legal framework, Member States were already in the position to address the special needs of impaired people in relation to copyright and related rights in their national legislation. The Delegation supported the work of the stakeholders' platform led by the WIPO Secretariat.

110. The Delegation of Turkey welcomed the draft treaty proposed in document SCCR/18/5 and supported the statement made by the Delegation of Germany on behalf of Group B. An exception was provided in the Turkish national legislation for the visually impaired which was more limited than the scope of exceptions and limitations provided under the draft proposal. Studies and exchanges of views on national legislation, as well as the questionnaire, would be of useful guidance for the SCCR's future work.

111. The Delegation of Kenya supported the statement made by the Delegation of Senegal on behalf of the African Group. Kenya had embarked upon the revision of its Copyright Act of 2001, which included very limited provisions on limitations and exceptions and did not incorporate the flexibilities offered by the Berne Appendix. The current proposal provided for extensive provisions on access by the visually impaired. The Delegation indicated that additional consultations were needed at national and regional level to look into the issue of exceptions and limitations including facilitating access by the visually impaired.

112. The Delegation of Malawi acknowledged the importance of the proposed treaty with regard to the visually impaired persons as it was also in the process of revising its current copyright law of 1989. The draft treaty would form a basis for inclusion of some of the proposed provisions its revised legislation. It supported the wish expressed by the Delegation of Senegal on behalf of the African Group to consider a holistic approach in addressing the issue of limitations and exceptions.

113. The Delegation of Jamaica stressed the importance of having exceptions in place to facilitate the access of blind and visually persons to knowledge and to fill the developmental gap caused by the absence of such exceptions in developing and least-developed countries. Jamaica was working towards finalizing the National Disabilities Act which encapsulated the rights of the visually impaired groups. The current Copyright Act would be amended in order to carve out the necessary exceptions for the blind and visually impaired.

114. The Delegation of the Philippines recalled that it had constantly supported the rights and welfare of the disadvantaged and vulnerable groups. Having ratified all of the core international human rights treaties, including the Convention on the Rights of Persons with Disabilities, the Government of the Philippines welcomed the proposal in document SCCR/18/5 and intended to study it in the light of existing Philippines' laws.

115. The Delegation of Benin was concerned about the rights of vulnerable persons and thanked the Delegations of Brazil, Ecuador and Paraguay for the proposal put forward on limitations and exceptions. It also supported the statement made by Senegal on behalf of the African Group.

116. The Delegation of Jordan hoped that the questionnaire would prove useful for the progress of the SCCR work.

117. The Delegation of the Republic of Korea supported the work to enhance the access to copyrighted materials for visually impaired persons. Its national law provided copyright exceptions for the benefit of visually impaired persons. It noted that many alternative solutions could be provided to enhance access to copyrighted materials by visually impaired persons instead of negotiating a treaty which was likely to require much time until its conclusion.

118. The Delegation of the United States of America expressed support for the statement made by the Delegation of Germany on behalf of Group B. The Treaty proposal would be carefully studied with a view towards contributing to the ongoing deliberations on that issue.

119. The Delegation of Togo supported the statement made by the Delegation of Senegal on behalf of the African Group.

120. The Delegation of India indicated there was a need to move beyond the stakeholders' platform and bring in positive international obligations to facilitate access to copyrighted material in special formats for disabled groups. In that connection, it welcomed the initiative taken by Brazil, Ecuador and Paraguay. India was in the process of introducing provisions to protect disabled groups in national copyright law. More time was needed to consult with stakeholders and provide further input in the next SCCR session as to the nature and contents of the draft proposal.

121. The Delegation of Greece supported the statements made by the Czech Republic, on behalf of the European Community and its 27 Member States, and by Germany, on behalf of Group B, regarding the proposal of Brazil, Ecuador and Paraguay. Any international treaty on the matter would require a level of protection at least equal to the one provided for by European law.

122. The Delegation of Brazil thanked all delegations that had expressed support for the proposal and looked forward to a more detailed discussion in the next sessions of the SCCR without prejudice to discussing the issue of exceptions and limitations in a broader context.

123. The Delegation of Ecuador recalled that document SCCR/15/7 showed that there were 57 countries that already provided in their domestic legislations a limitation in favor of the visually impaired persons or persons with disabilities. Similarly, the visually impaired market for books represented less than 1% of those who could acquire a work. It was extremely difficult to generate an industry that could produce works in accessible format for the visually impaired persons. In Spain, 103,000 works had been made available in accessible format whereas only 45,000 works had been produced in Argentina. If a uniform type of limitation was to be adopted, those works could circulate freely across boundaries. A local solution would always prove insufficient. The Delegation stated that the draft treaty needed thorough study by all delegations and thanked all delegations that had expressed openness to the matter.

124. The Delegation of Algeria endorsed the statement made by Senegal on behalf of the African Group.

125. The Delegation of Sudan supported the statement made by Senegal on behalf of the African Group.

126. The representative of the Library Copyright Alliance (LCA) stated that the absence of effective provisions addressing access to digital information had constrained libraries from performing functions that copyright law had previously facilitated. At a time of dramatic technological changes, the role of copyright limitations and exceptions had become unacceptably unbalanced. Legal deposit laws had to be broadened to include works published in all formats and to allow for preservation of those works. Libraries had to be able to supply documents to the user directly or through an intermediary library irrespective of the format and the means of communication. An exception was needed to resolve the problem of orphan works where the rightsholders could not be identified or located. A limitation on liability for libraries and libraries' staff who acted in good faith believing or having reasonable grounds to believe that they had acted in accordance with copyright law was also needed.

127. The representative of the Civil Society Coalition (CSC) stated that Argentina and Uruguay had decided to support the production of books for blind students which was a very important move. *Tifolibros* had produced 45,000 books in audio and Braille format for 4,500 users in 44 countries. Most of the books had been made available through a good national exceptions regime in Argentina. Publishers had made available archives and books but that represented only 4% of all the material that could be made available. There was a good opportunity to change the options available through a treaty that would permit the free movement of works in accessible formats.

128. The representative of the International Music Managers Forum (IMMF) stated that over 95% of all music downloads were unauthorized and illegal which constituted a market failure. There was a need to move from exclusive rights to rights of remuneration or to exclusive rights that could behave like remuneration rights. Greater and simpler access to music for the consumer was required and Internet and mobile service providers had to be brought into the value chain. The rules for copyright and related rights needed to be simplified so that permissions could be easily obtainable at reasonable rates. The era of high levels of control was over. Control had to be replaced with monetization for the benefit of all stakeholders. He fully supported the introduction of a treaty for the visually impaired, as well as any sensible suggestion regarding the international harmonization and universal minima for limitations and exceptions.

129. The representative of the Max-Planck Institute for Intellectual Property, Competition and Tax Law (MPI) said that it was in the interest of developing countries to start legislating at domestic level since the international treaties granted flexibility in that respect. A new treaty would be a tool out of proportion to reach its aim. Even if a number of Member States already provided for limitations in favor of the visually impaired, that did not mean that they would have an interest in being bound by a treaty. Other means could be available such as creating a regional treaty in Latin America. The development of a model law on that specific item could also prove very instrumental for developing countries with a view to facilitating cross-border circulation of works and protecting works abroad.

130. The representative of the International Federation of Reproduction Rights Organizations (IFRRO) stated that the role of trusted intermediaries as part of an enabling legal framework was to have a network of intermediaries that would enable secure delivery of content and rights allowing a cross-border delivery of digital content supplied directly from the source. According to a WIPO Study from 2006, trust meant the capability of delivering predictable

results including impossible results. She looked forward to fruitful deliberations with the WBU and results within an ambitious timeframe. In Australia, Canada, Germany and the United Kingdom, collective licensing played an important role by providing licenses to visually impaired persons' charities acting as a resource for authors and publishers.

131. The representative of the International Video Federation (IVF) stated that the conflict of interests between producers of musical and artistic works and their consumers and intermediaries affected large groups and involved great social interests. He supported the goal of making the largest number of works available and accessible to the widest range of users. There was a range of options available to do that. He strongly supported the stakeholders' platform as a constructive process. Many stakeholders in the audiovisual sector provided tools to make their works more accessible to people with disabilities such as additional features on DVDs including audio description for visually impaired users and subtitles for hearing impaired users. Undermining the international copyright framework which served as the incentive for the creation of new works was not the solution.

132. The representative of the European Newspapers Publishers Association (ENPA), also speaking on behalf of the World Association of Newspapers (WAN), believed that the current legislative framework, including the European and international legislation, already covered a broad range of exceptions. The reopening of discussions on existing exceptions and limitations was not the best solution and could have undesirable effects on the industry interests. Internal analysis had shown that the problems were more from a technical and financial nature. Newspapers publishers were currently struggling to remain in the market since advertising revenues were completely falling. The market was facing strong threats from news aggregators which used and stole contents.

133. The representative of the Electronic Information for Libraries (eIFL.net) supported the proposal submitted by Brazil, Ecuador and Paraguay relating to limitations and exceptions as an example of norm-setting activity. While libraries had a distinctive interest in particular provisions such as preservation, libraries served many people such as students and educators, scientists and researchers, professionals and the general public, including people with reading disabilities. It was necessary to improve access to copyright content for the blind, visually impaired and other disabled people but that was not only a matter of access. It was also an issue of human rights. The Convention on the Rights of Persons with Disabilities stated that parties should take all appropriate measures to ensure that persons with disabilities enjoyed access to cultural materials in accessible formats. eIFL had partnered with Bookshare, an American not-for-profit organization, to provide access to books for print disabled people. Under current copyright rules, Bookshare could only distribute books covered by license outside the United States of America, as national law did not allow cross-border circulation. That meant that less than 10% of the Bookshare collection could be offered to eIFL members. Discussions on technological tools and standards were important and necessary, but they could not substitute the enabling legal regimes.

134. The representative of the Electronic Frontier Foundation (EFF) expressed strong support for the treaty on exceptions and limitations for the visually impaired proposed by the governments of Brazil, Ecuador and Paraguay. A cross-border licensing regime and improving technology standards could only provide a partial solution. There was no replacement for the norm-setting work to address the pressing needs of the world's 161 million visually impaired persons. Access regimes based on licensing frequently failed to address market failure in smaller economies and had not enabled the import and export of accessible material. The international copyright regime had to remain faithful to the

mandate of Article 9 of the Convention on the Rights of Persons with disabilities in order to empower reading disabled users to develop their own formats and access to technologies. In addition, the draft questionnaire seemed to be based on the premise the copyright owners rights were paramount and exceptions had to be framed as narrowly as possible.

135. The representative of the National Association of Commercial Broadcasters in Japan (NAB-Japan) recognized that limitations and exceptions was a very important issue, but enough examination and analysis should be given to the scope and objective based on research on the domestic situation of each Member State which varied from country to country.

ELECTION OF THE VICE-CHAIRS

136. The Secretariat noted that, as a result of further consultations with regional groups, agreement had been reached on the composition of nominees for the position of Vice-Chair for 2009, namely Mr. Xu Chao of China, and Ms. Graciela Peiretti of Argentina. In addition, Morocco would be nominated for a Vice-Chair position for 2010. In the absence of any objection, the Vice-Chairs were elected accordingly.

CONTINUATION OF LIMITATIONS AND EXCEPTIONS

137. The Representative of Public Knowledge stated that international treaties required the granting of extensive protection to copyright owners while providing very little guidance on the structure of limitations and exceptions. Support was given for the treaty proposal tabled by the Delegations of Brazil, Ecuador and Paraguay regarding exceptions and limitations to copyright for the blind, the visually impaired and other reading disabled persons and Member States were urged to begin deliberations on the treaty. A treaty for the blind should address the issue of barriers to access created by technological protection measures used in delivering content digitally.

138. The Representative of the International Group of Scientific, Technical and Medical Publishers (STM) believed that the goal was to identify and successively close access gaps in a practical manner. STM members were in the fortunate situation of having digitized information dating back to the 1800s, and had recognized that the fundamental problem was the same for works whether in or out of copyright. Some STM publishers chose to publish in an open access format, and yet, in an open access world, the problem of access remained. It was hoped that the stakeholders' platform would address those issues at the same time.

139. The Representative of Consumers International (CI) gave strong and unqualified support to the proposal tabled by the Delegations of Brazil, Ecuador and Paraguay. WBU had been campaigning for a treaty for copyright exceptions for the blind since about 2003. The WIPO study on exceptions had been completed almost three years previously. The Treaty text under consideration had been released six months before. Moreover, copyright limitations and exceptions for the blind and visually impaired had been implemented in a national legislation for many years. Considering that the Convention on the Rights of Persons with Disabilities had taken only about five years from its inception to be concluded, there was no reason why consideration of a treaty on copyright exceptions for the blind needed to be delayed any further by additional studies and evaluations. More fundamentally, it was unfair and unbalanced that right holders had the privilege of having minimum standards of copyright

protection upheld in international law when the public was denied the same level of protection for its interests in the copyright system through minimum limitations and exceptions.

140. The Representative of European Digital Rights (EDRi) supported the positions taken by the EFF and Public Knowledge on the draft treaty proposal as a starting point for treaty negotiations. The European Union already had relatively good exceptions for persons with visual and other impairments. It was, therefore, logical to similarly support expanding those rules for global use. He noted that the European Union was solving the problem of pensions for stage musicians by taking a hard law approach and changing the copyright term directive. If elder stage musicians were sufficiently disadvantaged to justify that hard law approach, then visually impaired persons most certainly were at a similar level of disadvantage.

141. The Representative of the Ibero-Latin-American Federation of Performers (FILAIIE) stated that it was clearly necessary to have a system of limitations and exceptions to support the general interests of citizens in developed, developing and least-developed countries. It was noted, however, that when applying exceptions and limitations, the three-step test should be respected, which referred to certain cases and uses which should not cause any unjustified harm to the rightsholders. She supported the statement made by the Delegation of Colombia and requested that the platform be extended to other stakeholders in order to broaden the issue. The draft treaty should cover literary, dramatic, artistic and musical works.

142. The Representative of the Centre for International Environmental Law (CIEL) urged the Committee to move as quickly as possible towards the creation of a new international instrument on exceptions and limitations, in particular to address beneficial access for the disabled, for libraries and for educational purposes including adult education and mass literacy campaigns. Greater efforts still needed to be made towards deploying technology as a means of increasing access to knowledge. To that end, open-source platforms and standards were encouraged for their potential to increase access and to accelerate innovation. As one example, the DAISY Consortium's Standard for Digital Talking Books was an open-source standard that held great potential for people with disabilities.

143. The representative of the International Federation of Associations of Film Distributors (FIAD) stated that the examination of possible treaties for persons with visual handicaps was the only subject which had retained all participants' attention. Film distributors were already geared for persons with visual disabilities by virtue of technologies for audio description, which allowed such persons to understand the film within the context of projection to the general public, and therefore in situations better suited to social interaction than those destined for specific segments of the population. In addition, sub-titles were offered for persons with hearing disabilities. The availability of such techniques required access to material destined for projection in order to add the sound track or sub-title. Cinemas were progressively installing equipment for digital projection, which enabled the standards adopted by the International Organization for Standardization on sound tracks or sub-titles for the visually or hearing impaired. Similar techniques were used for dissemination of works for television and video. The application of such technical solutions with respect to cinematographic works was occurring progressively and without doubt more rapidly than could be expected from discussions on a treaty.

144. The Representative of IQsensato described the work of the African Copyright and Access to Knowledge (ACA2K) Project on the relationship between national copyright environments and access to knowledge, particularly learning materials in eight African countries, namely Egypt, Ghana, Kenya, Morocco, Mozambique, Senegal, South Africa and

Uganda. On disability and special needs, while a number of ACA2K study countries had taken steps through different legislative and policy measures to cater for individuals with disabilities and special needs, none of those countries had meaningful provisions in its copyright laws for people with disabilities. With respect to teaching and learning, the ACA2K research showed that, copyright laws generally did not accommodate distance education through specific limitations and exceptions.

145. The Representative of the Computer and Communication Industry Association (CCIA) indicated that appropriate limitations and exceptions ensured that, by encouraging artistic protection, technological innovation was not discouraged. The work of the Committee should focus primarily on the types of uses that actually characterized modern copyright, especially digital uses, and how to ensure that the copyright system responded with the flexibility required by different stakeholders. Limitations and exceptions were nothing to be afraid of, and in fact industries knew that limitations and exceptions could produce great economic value. It was known that unreasonable restrictions to access could stifle markets, inhibit innovation and reduce consumers' choice. He supported the preparation of a study on how limitations and exceptions facilitated development of new products and services based on access to copyrighted works in the digital environment.

146. The Representative of the International Federation of Library Associations (IFLA) stated that there was an immediate need to include provisions in national laws to address the realities of access to digital information. IFLA had developed a set of 12 Principles for Copyright Exceptions and Limitations for Libraries and Archives that addressed many of the issues, including provisions for persons with disabilities within the context to the work of the Committee. The Secretariat was urged to continue work on the areas identified in the proposal by the Delegation of Chile in document SCCR/13/5.

147. The Representative of the International Federation of Film Producers (FIAPF) indicated that the development of technologies for the visually impaired to access audiovisual works required significant investments, and it was therefore essential that any search for solutions and progress in the area should keep in mind the need to incentivize the process not nearly to prescribe it, in particular in the context of least-developed and developing countries where resources were limited. In Australia, for instance, a variety of private sector schemes existed to provide audio description tracks in selected cinemas and a marked increase in the choice of DVDs with similar facilities for the visually impaired which were released simultaneously with the standard version. He supported the stakeholders' platform initiative and recalled that exceptions and limitations to copyright did not create sustainable opportunities for works to be rendered accessible to persons with visual disabilities. There was invariably need for stakeholders' goodwill in providing funding to remedy market failure and pragmatic initiatives in which the public and private sectors could combine their resources.

148. The Representative of the International Publishers Association (IPA) noted that the area of access for visually impaired was not static, but was an integral part of the digital revolution experienced by all. It was an area of constant innovation, and of ongoing change. The work on access for the visually impaired persons did not rest with WIPO alone, but on many shoulders, such as standards bodies, publishing houses, visually impaired persons' charities, schools and universities, collecting societies and technology companies, among others. He commended the work of the visually impaired persons' organizations and publishers in Brazil which had found practical ways to address digital access, including access from abroad, by using digital rights management and technological protection measures in innovative ways. Some Members had experimented with collective licenses, such as Germany, Australia, the

United Kingdom or Canada. Others had found practical solutions without any need for copyright exceptions. Member States had a series of international instruments in force, none of which stood in the way of appropriate and balanced national copyright exceptions for persons with visual impairments. Therefore, he suggested that such national copyright exceptions should be crafted in close consultation with local visually impaired persons' organizations, libraries, and the local publishing community.

149. The Representative of the International Federation of the Phonographic Industry (IFPI) said that it would be valuable to examine national copyright exceptions so as to determine what action may be appropriate at the international level, whether a treaty or other techniques. She recalled that the unauthorized online distribution of works had caused a striking and rapid erosion of the value and enforceability of copyright and related rights, as faced by the recording industry and increasingly also by others. That issue should be part of the context for all copyright policy-making, both at national and international level. Finally, with respect to the proposed expansion of the draft questionnaire, she supported the inclusion of issues such as technological measures and exceptions for Internet service providers.

150. The Representative of the International Confederation of Music Publishers (ICMP) noted that the respect for rights of people with disabilities was a much larger issue than just copyright, and music publishers were supportive of efforts aimed at finding effective and practical solutions. She supported the work of the stakeholders' platform which demonstrated commitment and constructive partnership. Further fact finding under the auspices of WIPO would be highly valuable in identifying possible needs and gaps in current laws, and in pointing to the need and nature of changes.

151. The Representative of the Center for Technology and Society at *Fundação Aetolia Vargas* School of Law in Rio de Janeiro (FGV) supported the proposal for a treaty in document SCCR/18/5. FGV's studies had demonstrated that several developing and least-developed countries lacked the expertise and necessary knowledge for implementation, or were under strong pressure by industry lobbying not to implement meaningful exceptions and limitations provisions in their national laws. He urged further discussions to adopt exceptions and limitations for blind, visually impaired and print disabled persons, for educational purposes, including distance learning, for libraries and archives, and for private non-commercial use, among others. The issue was not just a legal issue, but raised social and moral concerns in all countries.

152. The Representative of Knowledge Ecology International (KEI) supported a treaty for reading disabled persons as a step to address human rights and development, and praised the efforts of the African Group and others to promote a treaty on access to knowledge. He suggested that the Committee included on its Agenda a discussion of the modalities of moving forward earlier deliverables on the limitations and exceptions agenda.

153. The Representative of the Copyright Research and Information Center (CRIC) in Japan noted that many countries had established a wide range of exceptions and limitations in their national laws, particularly under the so-called three-step test. For example, in Japan, the Copyright Law had been amended in 2008, to enable school textbooks to be changed to a special format to allow access by visually impaired persons without permission. There was current discussion on further amendments to the copyright law to extend the limitation from textbooks to every visual work. Domestic legal systems should be studied to learn what further elements were required to enable easy access to works by visually impaired persons at the international level.

154. The Representative of the British Copyright Council (BCC) stated that rightsholders in the United Kingdom could operate fruitful and successful licensing schemes to the benefit of visually impaired persons, as well as of educational establishments, including distance learning. Such licensing schemes involved close cooperation by all relevant parties and broadly operated to the satisfaction of both rightsholders and users. Such licensing solutions were pragmatic and not based on divisive ideologies. He recommended that the Committee further examined that experience.

155. The Representative of the World Blind Union (WBU) expressed its appreciation to the Delegations of Brazil, Ecuador and Paraguay for their role in mentoring the treaty proposal. The *raison d'être* of the Committee was to protect the legitimate rights of rightsholders, the creators, and at the same time protect the general public interest. The campaign on behalf of visually impaired persons did not jeopardize the economic rights of rightsholders. If a rightsholder decided to produce any of its works in accessible formats the proposed exceptions to those rights would be automatically null and void. The stakeholders' platform was also proving to be a useful operational-level solution to enable both sides, starting from different viewpoints, to find a solution to barriers to accessibility.

156. The Chair suggested that the Committee set up a one-month deadline for comments to the draft questionnaire. He noted that two-thirds of delegations had suggested the possibility of producing a value-added document on the basis of the Sullivan study on the needs of visually impaired persons. The question was posed to Member States whether such a Secretariat document, of 10 or 12 pages, would answer Members' needs in lieu of expanding the questionnaire.

157. The Delegation of Brazil supported the idea of one-month deadline for comments to the draft questionnaire. It emphasized that there was no intention to make the questionnaire unmanageable and that it was possible to find a compromise solution. As to the Sullivan study, the Delegation of Brazil pointed out the need to consider and discuss the proposal before giving its opinion and promised to react before the end of the session.

158. The Delegation of the Czech Republic, speaking on behalf of the European Community and its 27 Member States, agreed to a one-month period for comments to the draft questionnaire and observed that the deadline was June 30, 2009. It reserved its position on an extension to the questionnaire covering technological measures which would be included in the comments to the questionnaire. The Delegation supported the proposal of the Chair to ask the Secretariat to prepare a new document summarizing the Sullivan study instead of further extending the scope of the questionnaire.

159. The Delegation of India supported a one-month limit for Member States to comment on the questionnaire. On the matter of expanding the questionnaire, the Delegation reiterated that questions regarding social and cultural exceptions including religious exceptions should have been included in the questionnaire because many countries provided for these exceptions in their national legislation.

160. The Delegation of Senegal, speaking on behalf of the African Group, expressed the wish to prolong the time for commenting the questionnaire until the end of July 2009. The questionnaire should be open to enable States to add any other subjects and concerns they had. In addition, the analytical summary should cover all the recent studies on limitations and exceptions.

161. The Delegation of Japan agreed with the proposed deadline and with the idea that the Secretariat would prepare a summary of the study. The Delegation suggested that more time was needed to consider the implications of the proposition to extend the questionnaire as the issue of technological protection measures was not a matter of limitations and exceptions.

162. The Delegation of Germany, speaking on behalf of Group B, accepted the deadline for commenting on the questionnaire and the idea to ask the Secretariat to prepare a summary of the Sullivan study. It observed that there was no overwhelming support for extending the questionnaire as outlined by the Chair because it would be a substantial extension.

163. The Delegation of Pakistan supported the extension of the scope of the questionnaire to include social and cultural exceptions and limitations as highlighted by the Delegation of India. The deadline was understood by the Delegation as a date for providing comments on the revised extended questionnaire which had to be prepared by the Secretariat, not for giving the answers to questions contained in the questionnaire, and as such was agreed to. It asked whether the analytical document would be a policy paper outlining the principles and the objectives on the basis of which the treaty on exceptions and limitations would be developed.

164. The Chairman replied to the Delegation of Pakistan and explained that by suggesting that Secretariat could produce a document he had in mind a much more modest side product. The Sullivan study was a very extensive document which required time to be studied carefully and an analytic mind to understand it fully. The suggestion was to produce an analytical document based on the information contained in the study prepared by Mrs. Sullivan which identified main types of the solutions for visually impaired people and their principal features and categorized the solutions. Such document would be just a side document in the process which would help the Committee to understand what types of solutions existed at the national level.

165. The Delegation of the United States of America supported the proposed deadline for submitting comments on the questionnaire. The Delegation also expressed its support for the supplementary document on the blind and visually impaired. Also, it noted that the area of exceptions to technological protection measures was conceptually different from exceptions to classic exclusive rights and raised a number of very complex policy and legal issues.

166. The Delegation of Brazil pointed out that the conclusions of the 17th session of the SCCR foresaw that the area covered by the questionnaire had to include limitations and exceptions related to educational activities, libraries and archives, provisions for disabled persons as well as digital technology in the field of copyright. Including questions regarding exceptions and limitations for visually impaired would not mean a big extension of the questionnaire, but maybe two or three more questions with focus on the cross-border movement of copies in accessible formats.

167. The Delegation of Kenya, as an addendum to the intervention of Senegal on behalf of the African Group, drew the attention of Member States to the study that had been done under the auspices of the African Copyright and Access to Knowledge Project. The Methodology Guide of that project could be of help in drafting the questionnaire.

168. The Delegation of Chile agreed with the proposed deadline. Supporting the Delegation of Brazil, it referred to the mandate approved in the previous SCCR session regarding

questions on digital technologies in the questionnaire such as those related to computer programs, reverse engineering, backup copies and temporary copies, among others.

169. The Delegation of Senegal said that one month might be enough for some countries but not for others. It supported the previous statement made by the Delegation of Brazil about extending the questionnaire.

170. The Delegation of Ecuador agreed with the statement of the Delegation of Brazil.

171. The Delegation of India said that the questionnaire should be open-ended and inclusive, and supported the stand of the Delegation of Chile on inclusion of technological protection measures, temporary copies, software and Internet services providers.

172. The Delegation of Canada noted that more time was needed to formulate more detailed comments on document SCCR/18/5. With no direct reference to that document, it observed that there were several general principles which should have been addressed in any solution of the problem of access of visually impaired persons to copyrighted works. Any solution should allow for a variety of means for domestic production of adapted material, including exceptions, compulsory licenses or conditional exceptions. There might have been different limitations and exceptions for different types of adapted material even in one country, for example Braille or audio books. It also expressed its disbelief that having different types of limitations and exceptions could prevent the international exchange of adapted materials.

173. The Chair announced that the first preliminary draft set of conclusions would be distributed in English, French and Spanish. Agenda Item 5 on limitations and exceptions had been concluded, but the floor would still be given to delegations wishing to speak on it.

174. The Delegation of Sri Lanka, speaking on behalf of the Asian group, welcomed the initiative taken by Brazil, Ecuador and Paraguay to address the legitimate needs of visually impaired persons as a positive step forward. In regard of the draft questionnaire on limitations and exceptions contained in document SCCR/18/3, it requested the inclusion of additional areas as reflected in the report of the 17th SCCR session. The following time table was suggested: (i) Member States would submit written suggestions on the questionnaire by July 15, 2009; (ii) The Secretariat would consolidate and submit the revised questionnaire taking into account all the comments of Member States by August 30, 2009. The revised version would be posted on the WIPO website; (iii) if there were any further comment by Member States, the Secretariat should incorporate them into the questionnaire by September 30, 2009; and (iii) at least two weeks before the following SCCR meeting, WIPO should circulate the final draft questionnaire to the Member States.

175. The Chair thanked the Delegation of Sri Lanka for its helpful contribution and invited all delegations to engage in bilateral and multilateral contacts concerning the amplitude of the questionnaire in order to have a negotiated solution at the end of the meeting.

PROTECTION OF AUDIOVISUAL PERFORMANCES

176. The Chair opened discussion on the protection of audiovisual performances, and invited the Secretariat to report on the activities undertaken since the previous SCCR session.

177. The Secretariat indicated that it was a strongly committed to the protection of performers, especially in the norm-setting area. A Diplomatic Conference on the protection of audiovisual performances had taken place in Geneva in December 2000, reaching a provisional agreement on 19 articles. It was, however, unable to adopt a Treaty, notably for lack of agreement on the issue of transfer of rights from the performer to the producer. Since then, WIPO had engaged in an intensive activity of fact-finding and research, aimed at developing information material on the pending differences and improving the knowledge of the situation of performers at national level. In that regard, WIPO had published a considerable number of studies and surveys, which were available on its webpage. Since September 2006, WIPO had organized more than twenty national and regional seminars in Asia, Latin America, and Central and Eastern Europe. A large WIPO Africa Regional Seminar on the protection of performers had taken place in Malawi in January 2009, with the participation of 20 countries. National and regional seminars had followed different formats depending on the interests expressed by Member States and the stakeholders involved. WIPO had partnered with governments, trade unions and guilds, most notably with the International Federation of Actors (FIA), but also its sister federation, the International Federation of Musicians (FIM), associations representing collective management organizations, such as SPACR and AEPO-ARTIS, and organizations representing producers such as FIAPF. An information session devoted to the protection of audiovisual performances had taken place on November 5, 2008, and WIPO had presented a Summary of the Outcome of the National and Regional Seminars in the previous SCCR session. At its 17th SCCR session, Member States reiterated their commitment to work on developing the international protection of audiovisual performances and stressed the continuing importance of the exchange of information and informal consultations with the aim of finding a way forward.

178. The Chair opened the floor for any consideration concerning the on-going activities and also on the substance itself and on the basic question of whether, how and when the international regime of the protection of performances in the audiovisual field should be completed.

179. The Delegation of Senegal, speaking on behalf of the African group, requested further information on the conclusions of the Seminar held in Malawi and the organization of informal consultations in Geneva with the participation of experts from capitals. No effort should be spared to make progress in a constructive spirit in order to fill the legal gap on international protection for audiovisual performances without prejudice to the rights of the public and access to information. Moreover, deliberations on the draft treaty on the protection of audiovisual performances ought to take into account the disparity in levels of development and the recommendations of the development agenda. Due to the constant changing of personnel in the Permanent Missions, it would be advisable that the Secretariat made available an information document summarizing the positions of the different parties and providing background information on the issue.

180. The Delegation of Malawi indicated that the overall objective of the event held in Malawi had been to assess the level of protection of performers in the African context. Burkina Faso, Central African Republic, Cameroun, Côte d'Ivoire, Ethiopia, Kenya, Ghana, Mozambique, Madagascar, Mauritius, Niger, Nigeria, Rwanda, Senegal, South Africa, Tanzania, Togo, Zambia and the host Malawi had taken part in that event. The audiovisual industry in the region had grown exponentially in the last decade, especially in countries such as Nigeria, Ghana and Kenya. For example, the audiovisual industry in Nigeria was ranked third in the world. The majority of African copyright laws provided very strong protection to copyright owners, including authors, composers, translators, and publishers. Very little

attention was given to the rights of the people who made the public enjoy and appreciate works of the mind, namely the audiovisual performers. Furthermore, the increasing level of unauthorized use of such works was to the detriment of rightsholders. Few countries had provisions for the rental right or the right of making available. There was hardly any organization that collectively administered rights of audiovisual performers in the region except for Burkina Faso. As a way forward, Member States were called upon to give audiovisual performers sufficient legal protection in national legislation and in international treaties.

181. The Delegation of Japan believed that the national and regional seminars had played a significant role in enhancing awareness of the need for a treaty. It was hoped that Member States, together with the WIPO Secretariat, would continue to work to overcome current difficulties leading to the early adoption of a treaty on audiovisual performances.

182. The Delegation of Germany, speaking on behalf of Group B, thanked the WIPO Secretariat for its efforts in organizing several regional and national seminars. The summary of the outcome of those events demonstrated in a commendable way the results of the activities that had been carried out, as well as the different positions of the WIPO Member States on the issue of the protection of audiovisual performances. It hoped that that preparatory work would help the progress made and the agreements to be achieved.

183. The Delegation of Algeria endorsed the intervention by Senegal on behalf of the African Group. It was necessary to conclude a treaty on the protection of audiovisual performances while preserving the rights of the public to have access to information. It invited the Secretariat to conduct informal consultations with stakeholders with a view to coming up with a consensus that would give rise to a successful conclusion of the aforementioned treaty.

184. The Delegation of Serbia, speaking on behalf of the Group of Central European and Baltic States, stressed that the protection of audiovisual performances was of great importance for the countries of the region. The work within the Standing Committee was encouraged towards defining an appropriate mechanism for the protection of audiovisual performances at the international level. In that regard, WIPO's determination to continue to hold regional seminars was also supported.

185. The Czech Republic, on behalf of the European Community and its 27 Member States, expressed its commitment to advance the protection of audiovisual performers at the international level. The summary presented gave a good overview of the essential elements of protection for audiovisual performers which would be very useful for future discussions on the subject. WIPO could consider organizing the necessary informal consultations with the Member States, and a possible stocktaking meeting aimed at finding out the current position of WIPO Member States with regard to the renewing of efforts to conclude an international treaty on the protection of audiovisual performances.

186. The Delegation of Pakistan said that the Standing Committee should continue to give equal emphasis and adequate time for all substantive issues in future SCCR sessions.

187. The Delegation of Colombia reported on the Fifth International Forum of Audiovisual Performances in a globalized market, which had taken place in Colombia on December 11 and 12, 2008. One hundred and fifty participants representing the academic circles, performers, artists, and the audiovisual industry, had taken part in that Forum and had

engaged in a very fruitful dialogue on the need to adequately protect performances in the audiovisual field. Discussions should clarify that, if the rights of performers were guaranteed, the cost of the audiovisual productions should not necessarily rise. If that fear was not dissipated the existing opposition to the recognition of rights on the performances would remain.

188. The Delegation of Mexico expressed its concern for the little progress on that important issue. Audiovisual performances continued to be unprotected and, as a result, performers in the audiovisual field were not receiving appropriate and fair remuneration for their work. It requested the Secretariat to prepare an updating document that addressed the repercussions of digital technologies on audiovisual performances, and what prevented Member States from establishing a consensus on a treaty, among others.

189. The Delegation of El Salvador referred to the Diplomatic Conference held in 2000, and its commitment to reach an effective protection for audiovisual performers which remained intact. It supported the suggestions to convene open discussions or consultations to establish exactly what was preventing Member States from establishing a consensus.

190. The Delegation of the Russian Federation said that the ways of looking at the transfer of rights might be diverse. Firstly, the parties could provide that exclusive rights under the treaty be transferred from the performer to the producer of audiovisual recordings, or that those rights be exercised by the producer if the performer had consented to the recording and it was not otherwise provided in the agreement between them. In consequence, at the first level the general refutable presumption of a transfer of rights was provided for. Secondly, without prejudice to the international obligations and international public and private law, the agreement on the transfer of exclusive rights granted in accordance with the treaty or an agreement on the exercise of rights, could be regulated by the law of the country chosen by the parties or, if the law applicable to the agreement was not defined, by the law of the country which was most closely related to the agreement. Thirdly, it could be stipulated that any Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it would apply another provision concerning the ownership of the audiovisual performance provided for in that notification. The Director General would immediately communicate that notification to all Contracting Parties.

191. The Delegation of Argentina supported the exchange of information with regard to the protection of audiovisual performances, as well as the holding of seminars, regionally and nationally, and the convening of consultations to encourage a possible international protection of performers in the audiovisual area.

192. The Delegation of Senegal spoke on behalf of the African Group. The great challenge of the 21st Century was the challenge of cultural diversity. The major challenges faced by developing countries referred to the need to produce creative content and to promote their cultural industries. WIPO was urged to finalize that Treaty with intelligence, sensitivity and tactfulness so protection of performers could be combined with the right of access to information.

193. The Delegation of Morocco fully supported the statement of Senegal, on behalf of the African Group. Since 2000, information and communication technologies had improved but audiovisual performances remained without protection. It was necessary to look for means to revisit the consensus on the 19 agreed articles and to reactivate discussion on the treaty. Consultations on audiovisual performers were an apt way to discuss the issue realistically,

opened-mindedly and in a cooperative way in order to fill the existing gap regarding the international protection of audiovisual performances.

194. The Delegation of Indonesia was of the view that the Committee should not only request the Secretariat to continue organizing seminars, but providing the framework and even a timeline on what was necessary to achieve a common and shared goal. Regional consultations should take place with a view to narrowing differences among stakeholders within one year, so that at the 20th SCCR session the Committee could start a fresh negotiation towards the convening of a diplomatic conference.

195. The Delegation of the United States of America associated itself with the statement made by the Delegation of Germany on behalf of Group B. It remained fully aware of the need to protect audiovisual performers and copyright owners in the digital world, but was not aware of any narrowing of the wide differences among Member States regarding the means for achieving protection at the international level, particularly mechanisms that could be used to bridge the differing approaches to the transfer of exclusive rights from performers to producers. It supported WIPO's efforts to organize national and/or regional seminars on the issue of audiovisual performers and welcomed the opportunity to further discuss the results of such meetings within the Committee.

196. The Delegation of Nigeria aligned itself closely with the position of the African Group as conveyed by the Delegation of Senegal. Audiovisual performances had become a powerful medium of expression and communication that captured the ways of life, information, culture, artistic expressions, values and national integrity of different countries. Therefore, the need for the protection of audiovisual performance was no longer in question. It invited WIPO to examine more critically the concerns considering the intrinsic nature and substance of the subject matter of protection, particularly the strength of the rights and the balancing of the interests of various stakeholders closely involved in the protection. In particular, it was necessary to take into account the advancement of information and communication technologies and the exacerbated abuse and misuse of audiovisual content.

197. The Delegation of Uruguay commended the work that was being done on the protection of audiovisual performances. It was absolutely essential for the Secretariat to develop further studies on the rights of audiovisual performers and their relation to producers in order to promote policies that would truly benefit audiovisual performers.

198. The Delegation of Guinea supported the statement of the Delegation of Senegal on behalf of the African Group. It was necessary to continue holding seminars and information meetings so as to bridge divergent opinions and to find consensus at multilateral level.

199. The Director General appreciated the interesting discussion held on the protection of audiovisual performances. As to the normative question, rarely such unanimity of political will had been heard in the SCCR. Every delegation had expressed either support for taking forward the work in the normative area, an aspiration that the treaty be concluded or an aspiration to overcome the difficulties that prevented the conclusion of a treaty. The question was what to do with such a clear expression of political will to move forward. It would be possible to continue on the same path pursued since 2000, which had been extremely useful in illuminating the difficulties and some of the technical problems. Also, it would be possible to try to actually advance the matter in terms of concrete proposals. In that regard, the African Group, the European Union and Indonesia had requested consultations. Consultations were held in the past without being terribly focused. A strong expression from a number of

delegations, including notably Colombia, but also Mexico, related to the need of a sharper focus and more realism in those consultations. As suggested by the African Group, consultations could take place in Geneva with experts from the capitals in order to enable the Missions to apprise themselves of the situation in a better way. If the decision to hold consultations in that format was taken, along with the need to have some background documentation for them, the machinery of consultations could be left under the guidance of the Chair. It should be open consultations with widespread representation, including geographical representation. Obviously, it would be necessary to look more closely into the budgetary implications knowing that financial assistance for participation in those consultations should also be provided. A very important question about the methodology to be adopted in those consultations was that there seemed to be some degree of divergence about the focus, namely the areas of disagreement in 2000, areas regarding new technological developments that had taken place since then, or all negotiated provisions, including the 19 articles provisionally adopted.

200. The Chair recognized that the intervention of the Director General offered many elements for the positive conclusion of the meeting. His first preliminary proposal of conclusions would include all those elements. The discussions among government delegations on Agenda item 6 were concluded.

PROTECTION OF BROADCASTING ORGANIZATIONS

201. The Chair opened Agenda item 7 on the protection of broadcasting organizations. He recalled that the updating of the international system of the protection of broadcasting organizations had been on the agenda of the SCCR for more than ten years, since the Diplomatic Conference of 1996. The question of convening a diplomatic conference had been dealt with by the General Assembly at least three times. The mandate of the General Assembly to continue to work on that item had been given in 2007, to agree on a signal based approach protection and to finalize the objectives, specific scope and object of protection of a treaty. That mandate from subsequent General Assembly meetings had not changed. A working document on the proposals was still formally on the table, namely document SCCR/15/2 Rev. A Chair's informal paper had been prepared for the 17th SCCR session on the areas of divergence of views and alternative ways to be considered by the Committee. Alternative A referred to document SCCR/15/2 Rev. and was very similar to that of the 1996 Treaties. Alternative B sought another direction and was based on the kind of protection granted through the Phonograms Convention and the Satellites Convention. It gave freedom to Member States to select the means to grant international protection to broadcasting organizations, including administrative law, telecommunications law, criminal law, competition law or even misappropriation rules. In the 17th SCCR session, no decision had been taken regarding the options presented in the Chair's informal paper. An information meeting had been organized on Monday, May 25, 2009, to address the new developments in broadcasting with particular focus on developing countries. Finally, he invited the delegations to make their comments on the issue.

202. The Delegation of El Salvador stressed the importance of taking a step forward on the matter. It expressed its willingness to continue to work on the issue related to the protection of broadcasting bodies.

203. The Delegation of Germany, on behalf of Group B, welcomed the fact that the protection of broadcasting organizations remained on the Committee's Agenda. The need for

an effective protection of broadcasting organizations against the challenges of signal piracy was more than a national problem. Digitalization had not only facilitated an easier global exchange of information, culture and entertainment, but it had also increased the global threat of piracy for broadcasting organizations. The Delegation was aiming at a strong protection of broadcasting organizations against piracy.

204. The Delegation of Pakistan reiterated its position, expressed in the previous SCCR meeting, that the signal based approach should be the basis for any norm setting initiative regarding the protection of broadcasting and cablecasting organizations. Any treaty on the protection of broadcasting should not create unnecessary costs for consumers. New rights for broadcasters could interfere with copyright and other related rights protection and could create an imbalance in the copyright system affecting also the flow of information, access to knowledge, freedom of expression, cultural diversity and competition.

205. The Delegation of the Czech Republic, on behalf of the European Community and its 27 Member States, said that the Chair's informal paper might be considered a useful tool for future discussions on a draft treaty. In the European Community and in its Member States, the protection of broadcasting organizations was harmonized. WIPO could play an important role in furthering international negotiations with regard to the adequate scope of protection for broadcasters.

206. The Delegation of Colombia said that the Chair's paper represented an important starting point to resume the substantive discussion on the rights of broadcasting bodies. It suggested that the Secretariat took a pragmatic approach aimed at analyzing what were the real causes that had prevented the Committee from achieving concrete results in the fields of protection of broadcasters and audiovisual performers.

207. The Delegation of Canada, concerning the two options in the Chair's informal paper, favored the model based on the Geneva Phonograms Convention and the Brussels Satellite Convention as opposed to the approach set out in document SCCR/15/2 Rev. It believed that countries should be allowed to continue to permit the re-transmission of free over the air signals provided that content owners such as film and television producers, news and documentary producers, among others, continued to be compensated for such re-transmission consistent with the Berne Convention. Such re-transmission should be allowed only within the country in which the free over the air signal was received. That position on re-transmission was set out in more detail in Canada's submission in document SCCR/S2/3. Although it supported option B, if it was not possible to make progress based on that approach, it might be necessary to consider other options or alternatives not expressed in the Chair's paper as a means of fighting signal piracy.

208. The Delegation of the Republic of Serbia, on behalf of the Group of Central Europe and Baltic States, said that the discussion on that issue had been conducted for several years and the Committee should move forward on a consensual basis to agree on a satisfactory protection of broadcasting organizations at the international level.

209. The Delegation of Senegal, on behalf of the African Group, regretted that the various presentations of the Information Meeting held on May 25, 2009, had not reflected the variety of legal frameworks in Member States. Discussions on the international protection of broadcasting organizations should take into account the link between the strategic objective regarding the international cooperation for the respect of intellectual property and the strategic objective to consider the economic and social context of the countries of the world. The

questionnaire on the subject of protection, the beneficiaries of protection and the means available for enforcement had already been the subject of debate. In order to facilitate that process, the African Group proposed the organization of regional information sessions to enable the regional groups to strengthen their negotiating capacity.

210. The Delegation of India reiterated its commitment to comply with the signal based approach as mandated by the General Assembly. There was a need to prevent unauthorized use of signals in the traditional broadcasting sector. It supported the organization of regional seminars and studies followed by informal consultations to narrow differences on the issues. Those meetings should focus: firstly, on the current status of the broadcasting organizations in the developing and the least-developed countries in the digital context; secondly, on an analysis of the signal approach; thirdly, on the identification of the object, scope and objectives of the protection of broadcasting organizations. It also proposed that the Secretariat commissioned studies on broadcasting organizations focused on: firstly, the status of broadcasting in developing and least-developed countries and the nature of unauthorized use of signals; secondly, the nature of technology used in transmission of signals; and thirdly, the implications of extending the protection of the re-transmission covering computer network for developing and least-developed countries, particularly regarding access to information and growth of the broadcasting industry. The regional seminars and studies should be followed by informal regional consultations.

211. The Delegation of Malaysia said that the vibrant growth of technology had put pressure on the broadcasting organizations and rampant signal piracy was an issue that had to be addressed. The nature of the broadcast and the signal could not be addressed only within domestic confines, an international perspective was needed. The Rome Convention of 1961, was not adequate to solve all the problems raised by rapid technological developments in the area of broadcasting. After much deliberation, the SCCR did not seem to be making any concrete headway. The time had come for all Member States to take stock of where they were standing, and decide on a future course of action.

212. The Delegation of Mexico supported the adoption of an international instrument which could enable Member States to concretely combat signal piracy. It also supported the holding of regional seminars and national seminars on the topic.

213. The Delegation of Japan pointed out that signal piracy caused significant harm to broadcasters all over the world and undermined their role in the dissemination of information to the public. In that regard, it was necessary to provide broadcasters with effective means for fighting signal piracy. The Delegation believed that further efforts were needed on the part of the Secretariat, as well as Member States, towards a conclusion of the Broadcasting Treaty.

214. The Delegation of Australia said that the conclusion of a treaty to provide protection for broadcasters should be pursued. The Chair's informal paper would help the Committee's deliberations in that regard. Whilst option A of the Chair's paper would have been its preference, it also acknowledged that it was willing to accept and constructively contribute to option B, in case the latter was going to be chosen by the Committee.

215. The Delegation of South Africa supported the statement made by the Delegation of Senegal on behalf of the African Group. It believed that the situation in developing countries was not reflected in the discussions of the Information Meeting held on May 25, 2009. The Delegation wanted to stress a number of issues, raised during the Information Meeting: firstly, that signal piracy had increased tremendously; secondly, that some countries had

stronger measures whether legal or through enforcement agencies to capture signal piracy; thirdly, with the proliferation of new technologies, signal piracy was becoming too complex and expensive to monitor and eventually curb; fourthly, while copyright enforcement efforts resulted in successful prosecution in many countries, that did not deter the culprits from continuing or new ones from emerging. In South Africa the anti-piracy provisions of the Electronic Communications Act denied broadcasters exclusivity over sport and that provision had positive effects and minimized the theft of signals. In view of the role of broadcasting in the society, it recommended that further research or study be undertaken to look at how the lack of access due to cost contributed to signal piracy rates. That kind of research should be made available at the following SCCR meeting. That would enable Member States not to look at signal piracy in isolation, but considering the socio-economic dimension as well.

216. The Delegation of Indonesia recalled that the Committee should comply with the General Assembly's decision that the protection must be established on a signal based approach and the convening of a diplomatic conference could be considered only after the achievement of agreement on the objectives, specific scope and object of protection. It agreed that national and regional consultations on the subject matter should continue being organized.

217. The Delegation of the United States of America supported the statement of Group B made by the Delegation of Germany. A new treaty might be needed to update the protection of broadcasting organizations for the digital age, but the prospects for concluding such a treaty were remote. Nonetheless, the Delegation expressed willingness to continue discussing the protection of broadcasting organizations, mindful of the need to avoid further spending of time, energy and resources.

218. The Delegation of the Republic of Korea pointed out that broadcasting organizations should be accorded proper protection in the digital environment that posed challenges to rightsholders and their rights. Discussions on the protection of broadcasting organizations should be based on document SCCR/15/2 Rev. The Delegation hoped that progress would be achieved towards convening a diplomatic conference to adopt a new treaty to protect broadcasting organizations in the digital environment.

219. The Delegation of Brazil pointed out that the discussions so far had demonstrated that a wide divergence of views persisted with positions remaining far apart. Nevertheless, it did not oppose retaining the subject of broadcasting and cablecasting organizations on the agenda of the Committee. The Delegation agreed to continue exchanging views and sharing national experiences, bearing in mind the General Assembly's decision that discussions should be confined to a signal-based approach.

220. The Delegation of the Islamic Republic of Iran stressed that any agreement reached in WIPO should be based on paying more attention to different levels of development of the Member States. The Delegation supported continuing the exchange of views in order to reach progress on the objectives, specific scope and object of a treaty for the protection of broadcasting organizations.

221. The Delegation of Nigeria supported the position taken by the African Group, as conveyed by the Delegation of Senegal. The business of broadcasting and the need to protect it against piracy were closely linked to development. It supported continuing negotiations with the objective of establishing a balanced and effective international standard of protection for traditional broadcasting and cablecasting organizations.

222. The Delegation of Morocco endorsed the comments made by Senegal, on behalf of the African Group. Developments in technology made it necessary to find ways to protect broadcasting organizations in a well-balanced manner. It regretted that the Committee had not devoted the necessary time to be able to make progress. It also supported the holding of consultation meetings at regional levels so as to bring together the differences of opinion.

223. The Delegation of China had a flexible and open attitude towards protecting broadcasting organizations, irrespective of the approaches in the Chair's paper. The Delegation also believed that the protection of audiovisual performances was a very important topic. It supported the efforts made by the Standing Committee in that area and hoped that a treaty on that subject would be concluded at the earliest.

224. The Delegation of Chile pointed out that the positions taken by the various members of GRULAC remained quite distant. The Delegation proposed that the Secretariat carried out studies on the various approaches for the updating of the protection of broadcasting organizations.

FUTURE WORK OF THE COMMITTEE

./ 225. The Chair introduced the draft conclusions of the SCCR (attached as annex I to this report). He invited the Committee to give comments, raise questions and seek clarifications.

226. The Delegation of Germany, speaking on behalf of Group B, appreciated the draft conclusions as an excellent working base, and suggested to read the first paragraph as follows: "The Committee reconfirmed its commitment to expedite its work on the complex issues effecting access by the blind, visually impaired, and other reading disabled persons to protected works. The Committee agreed that Member States would continue to consult on the issues at the national level and report on their activities and offer observations about possible solutions during the 19th session of the SCCR." The Delegation further suggested the second paragraph to read as follows: "The Committee thanked the Delegations of Brazil, Ecuador and Paraguay for introducing the proposal relating to limitations and exceptions, treaty proposed by WBU. Some Member States expressed the view that the proposal should be discussed at the 19th session of the SCCR after Member States have had time to analyze it. Other Member States stated the view that deliberations regarding that instrument or any instrument would be premature because many Member States were still in immersed in fact finding and evaluation." The Delegation suggested replacing the words "took note" with the word "welcomed" in the first sentence of the third paragraph. The Delegation proposed replacing three paragraphs, with the following text: "The Committee considered the draft questionnaire prepared by the Secretariat as requested by the 17th session of the SCCR. The Committee noted the draft questionnaire contained questions related to educational activities, activities of libraries and archives, provisions for the disabled persons, as well as the implications of digital technology in the field of copyright. The Committee discussed the possible expansion of the questionnaire to include more questions related to digital technology, activities of libraries, and visually impaired persons." The Delegation further pointed out that the Member States expressed the need for more time to coordinate and consult at the national level. The Delegation proposed an additional paragraph drawn from the Chair's proposed paragraph 9 which would read as follows: "The questionnaire shall enable governments to furnish any other information regarding limitations and exceptions in their national laws that they might consider pertinent including social, cultural and religious

limitations and exceptions.” The Delegation suggested that the part on the questionnaire could be completed by paragraph 5 which dealt with the questionnaire. Finally, it highlighted the potential time conflict of the organization of a substantive WTO meeting and the next session of the SCCR, both to be held during the same week of November 30 to December 2, 2009.

227. The Delegation of Sri Lanka, speaking on behalf of the Asian Group, suggested a new first paragraph which read as follows: “The Committee reconfirmed its commitment to the broad agenda on exceptions and limitations as set out in the conclusions of the SCCR/17 meeting, especially to expedite its work on the access of the blind, visually impaired and other reading disabled persons to protected works.” On paragraph 2, it suggested including after the words “the proposal” the following words “along with any other alternative proposals submitted by Member States will be discussed at the 19th session of the SCCR” and the deletion of “after Member States have had time to analyze the proposal.” In paragraph 3, the Delegation suggested amendments as follows: “The Committee recommended that the Secretariat makes available funding to support the participation of stakeholders from developing countries.” It also suggested the deletion of “explore possibilities for extra-budgetary” and replace “requested” with “recommended.” The Delegation proposed the amendment in paragraph 5 as follows: “Based on those comments the Secretariat will circulate the revised questionnaires at least one month prior to the 19th SCCR session to facilitate its consideration and final approval during the 19th session of the SCCR.” The Delegation suggested removal of brackets in paragraphs 7 and 8. Paragraph 9 was to be amended as follows: “the questionnaire shall enable governments to furnish any other information regarding limitations and exceptions in their national laws that were not addressed in the questionnaire and they might consider pertinent.” The following sentence was to be inserted at the end of paragraph 18: “The Committee invited the Secretariat to organize regional and national seminars followed by regional consultations on the objectives, specific scope and object of protection under a possible new instrument.”

228. The Delegation of Senegal, speaking on behalf of the African Group, proposed a new wording of paragraph 1 as follows: “The Committee reconfirmed its commitment to expedite its work on the exceptions and limitations taking note of the interest expressed by the Member States for the progression of work in an overall and inclusive approach taking into account the concerns linked to development.” In the first sentence of paragraph 2, the word “appreciation” should be replaced with the word “interest.” The remainder of the paragraph was to read as follows: “In this respect the Committee agreed to work on the exceptions and limitations in an overall and inclusive framework at a norm-setting level taking into account its decision to expedite the work of the access of people having visual impairments and other disabilities to protected work.” The Delegation proposed adding the words “amongst other working documents on limitations and exceptions.” The last sentence in paragraph 3 was to substitute the words “to explore” with “to ensure possibilities for extra-budgetary funding to support the participation of stakeholders from developing countries and least-developed countries and to organize the forthcoming meeting in a southern country. The Delegation proposed a new paragraph 4 as follows: “The Committee took note that it was going to discuss the Study on exceptions and limitations in favor of educational activities including remote teaching, its cross-border aspects, specifically in developing countries and least-developed countries, in accordance with the decision taken in the 17th session of the SCCR. The Study should be available in all the working languages of the Committee at least two weeks before the holding of the forthcoming session.” Paragraph 5 should read as follows: “The Committee requested the Secretariat to prepare an analytical document identifying the main exceptions and limitations in various areas based on the whole of the

studies already carried out to date.” Paragraph 6 should read as follows: “The Committee invited delegations to send comments to the Secretariat regarding the draft questionnaire before July 15, 2009. Following the informal consultations which will have been carried out, the Secretariat will present a revised questionnaire at the latest by the 30th of September 2009, which will be circulated to the Member States to collect their responses from the Member States. A compilation of the responses received will be presented before the next session of the Committee.” Paragraph 7 was to read as follows: “The Committee agreed that with regards to visually impaired persons, libraries, and archive services *inter alia*: (a) questions relating to the functions of cross-border exceptions and limitations; (b) questions relating to digital technology in copyright; and (c) questions relating to exceptions and limitations which are social, cultural and religious.”

229. The Delegation of Senegal suggested some additional wording at the end of paragraph 10 to indicate that the document remained open to comments made by the Member States. It also underscored that studies had to be made available in all the official languages of the United Nations.

230. The Delegation of Costa Rica, speaking on behalf of GRULAC, indicated that the Committee had to reconfirm its commitment to the broad agenda on exceptions and limitations in accordance with document SCCR/16/2 and its willingness to continue its work. Many delegations had expressed their support for the proposal submitted by Brazil, Ecuador and Paraguay, relating to limitations and exceptions based on the WBU text. A number of other delegations had requested more time to consider or analyze the proposal and some delegations had expressed their desire for a broader approach to exceptions and limitations. More information had to be provided on the analytical report that had been referred to and an executive summary to the Sullivan report had to be prepared to identify the most important features of the limitations and exceptions for the visually impaired persons in national laws and their international dimension, as well as to indicate the main legislative solutions in that regard. In relation to paragraph 7, the issue of visually impaired persons had to be looked at without prejudice to the consideration of the other aspects linked to exceptions and limitations. It requested the Secretariat to organize informal open consultations among all Member States on possible solutions to the current deadlock in relation to audiovisual performances. A corresponding wording had to be used for paragraph 16. Finally, the information session on developments in broadcasting was appreciated.

231. The Delegation of the Czech Republic, speaking on behalf of the European Community and its 27 Member States, expressed support for the statement made by the representative of Group B on the prematurity of the deliberations regarding the proposal for a treaty.

232. The Delegation of Serbia, speaking on behalf of the Group of European and Baltic States, supported the statement delivered by the European Community and its 27 Member States.

233. The Delegation of China supported the draft conclusions.

234. The Delegation of Angola supported the statement made by the African Group. It also proposed to find a new date in October for the next SCCR session, as the Ministerial Conference of WTO would be held during the same proposed week of that session and many small-size delegations would not have the time to attend the latter.

235. The Chair noted the amount of proposals presented by the various groups and invited the group coordinators to meet for consultations. He also proposed that, in order to allow the non-governmental organizations to express their positions, one single organization could collect all non-governmental organizations' position papers on Agenda items 6 and 7, and other issues. Those papers should be no more than three pages and would be compiled by the Secretariat and presented to the Committee at a later stage. Finally, he asked whether the group coordinators had agreed how to proceed with the preparation of the final conclusions.

236. The Delegation of Senegal said that the African Group would be meeting to further discuss the draft conclusions.

237. The Delegation of Sri Lanka, on behalf of the Asian Group, proposed to meet with its Group to discuss the draft conclusions.

238. The Delegation of Germany, on behalf of Group B, noted that the conclusions needed to accurately and completely reflect not only what had been directly the subject of the deliberations but also the different views expressed by the groups. He proposed a joint meeting of Group B together with the European Union and its 27 Member States and the Group of Central European and Baltic States.

239. The Delegation of the Czech Republic said that the draft conclusions were a very good basis for the Committee's work.

240. The Chair noted that more time would be available for the negotiations of the draft conclusions. He proposed that the group coordinators, plus one or two delegates from each regional group, took part in a working session to finish the text of the conclusions. The plenary would meet thereafter.

CONCLUSIONS OF THE SCCR

241. The Chair resumed the session, noting that the final text of the conclusions had been discussed during seven and a half hour in an informal working session and all participants had demonstrated great flexibility and spirit of cooperation. He thanked all for their efforts and noted that the Standing Committee unanimously adopted the following conclusions:

LIMITATIONS AND EXCEPTIONS

The Committee reconfirmed its commitment to work on the outstanding issues of the limitations and exceptions, as decided at the seventeenth session of the SCCR, taking into account development-related concerns and the need to establish timely and practical result-oriented solutions. Likewise, the Committee reaffirmed its commitment to continue without delay its work in a global and inclusive approach, including the multifaceted issues affecting access of the blind, visually impaired and other reading-disabled persons to protected works.

The Committee expressed its appreciation for the Proposal by Brazil, Ecuador and Paraguay Relating to Limitations and Exceptions: Treaty Proposed by the World Blind Union (WBU). Views were expressed: (i) supporting the proposal for a binding instrument; expressing the wish for more time to analyze it; (ii) expressing the desire to continue the

work on the basis of a global and inclusive framework; and (iii) expressing that deliberations regarding any instrument would be premature. Member States will continue to consult on these issues at national level and report on the activities and views on possible solutions. That proposal, together with other possible proposals and contributions by the Members of the Committee, will be discussed at the nineteenth session of the SCCR.

The Committee welcomed the stakeholders' platform Interim Report, and encouraged the Secretariat to continue the work of the platform and report on its activities during the nineteenth session of the SCCR. The Committee requested that the Secretariat ensure the effective participation, and make available funding to support the participation of stakeholders from developing and least-developed countries. The Secretariat shall make its best efforts to organize a meeting of the platform in a developing country.

The Committee noted with approval the forthcoming study requested at the seventeenth session of the Committee on exceptions and limitations for the benefit of educational activities, including distance education and the trans-border aspect thereof, in particular for developing and least-developed countries. The Secretariat will see that the study will be completed as expeditiously as possible and be made available to the Committee prior to its nineteenth session.

The Committee requested the Secretariat to prepare analytical documents, identifying the most important features of limitations and exceptions in the various domains based on all the studies carried out, as well as addressing the international dimension and possibly categorizing the main legislative solutions.

The Committee took note of the draft questionnaire on limitations and exceptions and invited delegations to send comments to the Secretariat before July 15, 2009. Based on those comments, the Secretariat will present a revised questionnaire at least one month prior to the nineteenth session of the SCCR for consideration and with the aim of final approval during that session.

The areas covered by the questionnaire will include limitations and exceptions for educational activities, activities of libraries and archives, provisions for disabled persons, as well as the implications of digital technology in the field of copyright, including as they relate to social, cultural and religious limitations and exceptions. The Committee noted that a number of delegations requested that the questionnaire should incorporate limitations and exceptions related to technology transfer issues. The Committee also noted that a number of delegations requested that in relation to visually impaired and other persons with disabilities, libraries and archives, educational use and research, questions regarding the function of limitations and exceptions across borders would be added.

The questionnaire shall enable governments to furnish any other pertinent information regarding limitations and exceptions in their national laws that are not addressed in the questionnaire.

The Committee took note of the supplementary information sent by Member States regarding the WIPO studies on limitations and exceptions presented in the context of the seventeenth session of the SCCR and noted that the studies remain open for comment.

The issue of limitations and exceptions will be maintained on the Agenda of the nineteenth session of the SCCR.

PROTECTION OF AUDIOVISUAL PERFORMANCES

The Committee expressed its appreciation for the seminars organized by the Secretariat and encouraged the Secretariat to continue that activity.

The Committee reaffirmed its commitment to work on developing the international protection of performances in audiovisual media.

The Committee requested the Secretariat to prepare a background document on the main questions and positions.

The Committee requested the Secretariat to organize, in Geneva, informal, open-ended consultations among all members of the Committee on possible solutions to the current deadlock.

The protection of audiovisual performances will be maintained on the Agenda of the nineteenth session of the SCCR.

PROTECTION OF BROADCASTING ORGANIZATIONS

The Committee expressed its appreciation for the information session on developments in broadcasting.

The Committee requested the Secretariat to commission a study on the socio-economic dimension of the unauthorized use of signals, including the impact of the lack of access on the one hand and the need for an effective protection for broadcasters, on the other hand, with the aim to be available for discussion at the twentieth session of the SCCR.

The Committee reaffirmed its willingness to continue its work on the protection of broadcasting organizations on a signal-based approach, according to the mandate of the 2007 General Assembly.

The Committee invited the Secretariat to organize regional and national seminars upon the request of Member States or regional groups on the objectives, specific scope and object of protection of a possible draft treaty. The Committee took note of the proposal to organize regional consultations.

The protection of broadcasting organizations will be maintained on the Agenda of the nineteenth session of the SCCR.

OTHER MATTERS

Several delegations underlined the need for the studies prepared to be available in all official UN languages. The Committee requested the Secretariat to produce the cost estimate of translating the studies.

NEXT SESSION OF THE SCCR

The dates of the nineteenth session of the SCCR will be announced later after consultation with Director General of WIPO.

OTHER MATTERS

242. The Chair noted that there was a document proposing accreditation of the non-governmental organization *Corporación Innovarte*. As it seemed that all the required conditions had been met for official accreditation, he proposed to accept and approve the accreditation of that organization as an observer to the SCCR. He noted that the accreditation had been approved by the Committee.

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

CLOSING OF THE SESSION

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

[Annex follows]

ANNEXE/ANNEX

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

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

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VIET NAM

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YÉMEN/YEMEN

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III. ORGANISATIONS INTERGOUVERNEMENTALES/
INTERGOVERNMENTAL ORGANIZATIONS

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

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ORGANISATION MONDIALE DU COMMERCE (OMC)/WORLD TRADE
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ORGANISATION RÉGIONALE AFRICAINE DE LA PROPRIÉTÉ INTELLECTUELLE
(ARIPO)/AFRICAN REGIONAL INTELLECTUAL PROPERTY ORGANIZATION
(ARIPO)

Mohi El Din MABROUK, Head, Legal and Training Department, Harare

* 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.

UNION DES RADIODIFFUSIONS DES ÉTATS ARABES (ASBU)/ARAB
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Association allemande pour la propriété industrielle et le droit d'auteur (GRUR)/German

Association for the Protection of Intellectual Property (GRUR)

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Association de l'industrie de l'informatique et de la communication (CCIA)/Computer and
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Association des organisations européennes d'artistes interprètes (AEPO-ARTIS)/Association
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Association des télévisions commerciales européennes (ACT)/Association of Commercial
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Centre international pour le commerce et le développement durable (ICTSD)/International Centre for Trade and Sustainable Development (ICTSD)

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