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WORLD INTELLECTUAL PROPERTY ORGANIZATION
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STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

Fifteenth Session
Geneva, September 11 to 13, 2006

REPORT

approved by the Committee

1. The Standing Committee on Copyright and Related Rights (hereinafter referred to as the “Standing Committee”, the “Committee” or “SCCR”) held its fifteenth session in Geneva from September 11 to 13, 2006.
2. The following Member States of WIPO and/or members of the Berne Union for the Protection of Literary and Artistic Works were represented in the meeting: Algeria, Argentina, Armenia, Australia, Austria, Barbados, Belarus, Belgium, Benin, Bolivia, Brazil, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Côte d’Ivoire, Croatia, Czech Republic, Denmark, Dominican Republic, Egypt, El Salvador, Ecuador, Estonia, Finland, France, Germany, Greece, Guatemala, Holy See, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Latvia, Lithuania, Luxembourg, Malaysia, Mexico, Moldova, Mongolia, Morocco, Nepal, Netherlands, Nigeria, Norway, Oman, Pakistan, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Serbia, Singapore, Slovenia, South Africa, Spain, Sudan, Sweden, Switzerland, Thailand, Trinidad and Tobago, Turkey, United Arab Emirates, United States of America, United Kingdom, Uruguay, Venezuela and Viet Nam (83).
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), World Trade Organization (WTO), *Organisation Internationale de la Francophonie* (OIF), South Centre, African Union, Arab Broadcasting Union (ASBU) (6).

5. The following non-governmental organizations took part in the meeting as observers: Actors, Interpreting Artists Committee (CSAI), Alfa-Redi, Asia-Pacific Broadcasting Union (ABU), *Association brésilienne des émetteurs de radio et de télévision* (ABERT), Association of Commercial Television in Europe (ACT), Center for International Environmental Law (CIEL), Central and Eastern European Copyright Alliance (CEECA), Centre for Performers' Rights Administrations (CPRA) of GEIDANKYO, Civil Society Coalition (CSC), Computer and Communications Industry Association (CCIA), Consumers International (CI), Copyright Research and Information Center (CRIC), Creators' Rights Alliance (CRA), Digital Media Association (DiMA), Electronic Frontier Foundation (EFF), European Broadcasting Union (EBU), European Bureau of Library, Information and Documentation Associations (EBLIDA), European Digital Rights (EDRi), European Federation of Joint Management Societies of Producers for Private Association of Audiovisual Copying (EUROCOPYA), European Performers' Organizations (AEPO-ARTIS), European Law Students' Association (ELSA International), Exchange and Cooperation Centre for Latin America (ECCLA), German Association for the Protection of Industrial Property and Copyright Law (GRUR), Ibero-Latin-American Federation of Performers (FILAIE), Independent Film and Television Alliance (IFTA), International Association of Broadcasting (IAB), International Center for Trade and Sustainable Development (ICTSD), International Chamber of Commerce (ICC), International Confederation of Societies of Authors and Composers (CISAC), International Federation of Actors (FIA), International Federation of Associations of Film Distributors (FIAD), International Federation of Film Producers Associations (FIAPF), International Federation of Library Associations and Institutions (IFLA), International Federation of Musicians (FIM), International Federation of the Phonographic Industry (IFPI), International Literary and Artistic Association (ALAI), International Music Managers Forum (IMMF), International Organization of Performing Artists (GIART), International Publishers Association (IPA), International Video Federation (IVF), IP Justice, Max-Planck-Institute for Intellectual Property, Competition and Tax Law (MPI), National Association of Broadcasters (NAB), National Association of Commercial Broadcasters in Japan (NAB-Japan), North American Broadcasters Association (NABA), Public Knowledge, *Société portugaise d'auteurs* (SPA), Union of National Broadcasting in Africa (URTNA), United States Telecom Association (48).

OPENING OF THE SESSION

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

ELECTION OF A CHAIR AND TWO VICE-CHAIRS

7. The Standing Committee unanimously elected Mr. Jukka Liedes (Finland) as Chair, and Ms. Zhao Xiuling (China) and Mr. Abdellah Ouadrhiri (Morocco) as Vice-Chairs.

ADOPTION OF THE AGENDA

8. The Committee adopted the Agenda as set out in document SCCR/15/1.

ADOPTION OF THE REPORT OF THE FOURTEENTH SESSION

9. The Chair recalled that a Draft Report of the fourteenth Session had been made available to the Committee.
10. The Delegation of Australia indicated that its Delegation had notified some changes to the Secretariat.
11. The Chair noted that the Standing Committee adopted the Report of its fourteenth session with the proviso that the delegations who still had changes to be made to their own interventions might hand them over in written form to the Secretariat during the week of the present session.

ACCREDITATION OF CERTAIN NON-GOVERNMENTAL ORGANIZATIONS

12. The Chair noted that document SCCR/15/3 contained the requests by the Federalist Society for Law and Public Policy Studies and by the Institute for Trade Standards and Sustainable Development (ITSSD) to be admitted as *ad hoc* observers. The same request was made by the Institute of Authors' Rights in document SCCR/15/3 Add.
13. The Committee gave its consent to the admission of those non-governmental organizations as *ad hoc* observers.

PROTECTION OF BROADCASTING ORGANIZATIONS

14. The Chair recalled that the purpose of the meeting was to continue the preparation of an enhanced system of protection of the rights of broadcasting organizations. In September/October 2005 the WIPO General Assembly had decided that there would be two additional meetings of the Standing Committee to accelerate discussions on the second Revised Consolidated Text and on the Working Paper. That task had been dealt with during the thirteenth session of the SCCR in November 2005. The General Assembly decided that those meetings had to agree and finalize the basic proposal for a treaty on the protection of the rights of broadcasting organizations in order to enable the 2006 General Assembly to recommend the convening of a diplomatic conference in December 2006 or at an appropriate time in 2007. The second task, to agree and finalize a basic proposal for a treaty, was the main task of the second meeting of the SCCR in May 2006. For that meeting, the Draft Basic Proposal had been organized in such a way that there was a document containing the articles necessary for a treaty and all alternative solutions were placed in a Working Paper. There was an optional appendix on the protection of web- and simulcasting which was intended to be an integral part of the treaty but an integral part which was not mandatory. It was intended to make it easier to consider the matter of webcasting, since there was a broad opposition to include webcasting as an issue in the treaty. At the end of the session it was decided that a Revised Draft Basic Proposal would be drafted and that webcasting and simulcasting would be tackled following a separate procedure. The Revised Draft Basic Proposal would contain

only provisions on the protection of traditional broadcasters and cablecasters. New proposals on the issue of webcasting were to be submitted by August 1, 2006. The Delegation of the United States of America had made a proposal on that matter. A separate basic proposal would be prepared later on webcasting or netcasting including simulcasting, and another meeting of the SCCR would deal with that substantive item after the General Assembly. The current meeting would be confined to the protection of traditional broadcasters rights in order to reach conclusions that would allow the Committee to recommend to the General Assembly the convening of a diplomatic conference on the traditional broadcasters rights. The General Assembly in 2005 had decided that two more meetings of the SCCR would be organized. The present session was the third session of the SCCR and thus demonstrated the will and willingness of all delegations to try to make progress and to arrive at a successful conclusion of a new instrument. The new document called the Revised Draft Basic Proposal only dealt with the area of traditional broadcasters rights. The new document contained in its alternatives all-important views that had been manifested in proposals from delegations. The experience from the Diplomatic Conferences in 1996 and 2000 demonstrated that if delegations so wanted, they might produce results even if there were many open questions. In 1996, all items concerning two treaties could be solved in a conference that took three weeks. There were three basic proposals and two treaties were concluded. Many unresolved items were solved in that Diplomatic Conference in the Plenary and Main Committees and in an informal open-ended consultation group. If the 2000 Diplomatic Conference had not been able to produce a final conclusion of a new treaty it was to a high degree due to hidden doctrinal problems. He could not, at least for the moment, see any similar deal-breaking issue that could not be solved in a diplomatic conference.

15. The Chair stated that the task of the Committee was to agree and finalize a basic proposal for a diplomatic conference. The most contested item of webcasting was now out of the Revised Draft Basic Proposal and all alternative proposals were presented in that document. One of the main tasks was now to look at that document and to agree on and finalize the basic proposal to be presented to the diplomatic conference. As a basis for negotiation and as a basis for further development in those negotiations, “agree” did not mean and could not mean that all open questions should be resolved. Otherwise, there would be no need for a diplomatic conference separate from the work of the Committee. To “finalize” meant that the Committee should express what should be done to that document in order for it to be converted into a basic proposal that would be distributed to all Members of WIPO for consideration and for the preparation of the negotiating process that would start when the diplomatic conference would begin. The basic proposal was a working paper. The delegations might look at all the items and were free to adopt their positions and make their proposals in the diplomatic conference. The diplomatic conference would be a process of negotiation where delegations together tried to find joint solutions, on the basis of consensus, for all issues. Sometimes, voting took place in the main committee as well as in the plenary, but consensus was always the main method. Sometimes voting had taken place in diplomatic conferences and the result had been reasonable, well respected and well joined by everybody afterwards. In case the Committee recommended that a diplomatic conference should be convened, a basic proposal, amended according to the advice and decisions of the Committee, would be published some months before the conference. Normally, seminars, conferences, information meetings, consultations were organized before the conference to allow for exchanges of views. That preparatory process consisting of meetings in different parts of the world had been very helpful at earlier instances.

16. The Chair noted that in professional papers and on the Internet discussion had been going on concerning the establishing a new treaty to protect the rights of broadcasting organizations. There were clearly some issues in that discussion that needed clarification. Firstly, the Revised Draft Basic Proposal included what many countries actually have in their national legislation. There were no separate and different new *sui generis* rights in the instrument. The document was based on proposals from governments, which had proposed first and foremost what they already had in their national law. Then there were proposals which included elements that were not found in one or another country's national legislation. There were many countries where almost all elements of the draft were already in place. Sometimes something was missing, but in order to have a tested, suitable level of protection, the basis for negotiations should represent some ambition in order to be able to test such new elements. If they could not be accepted, then those elements should be dropped in order to come to the decent well-functioning level acceptable for all. The second item was the right of retransmission, which had been presented as a broad right covering retransmission by any means. It had been argued that that right would amount to bringing back webcasting into the scope of protection. This, would, however, not be the case since only the rights of broadcasting organizations engaged in the traditional broadcasting would be addressed under the new instrument. The definitions of broadcasting and cablecasting had provided clarification in that respect. The article on the scope of protection also provided guidance by excluding the mere retransmission, i.e., retransmission by cable, rebroadcasting, retransmission using other transmission paths, including retransmission through the Internet from the scope of protection, as the object of protection. However, even if traditional broadcasters were to enjoy protection against retransmission over the web, that protection would not amount to granting separate protection to the person who would take the signal and engage into retransmission activities. A broad right of retransmission was necessary, however, and the activity of retransmission could involve many kinds of existing or future technologies. The principle had to be that if someone started exploiting an investment of broadcasting organizations, they should be given the possibility to authorize or prevent the exploitation of their investment through the use of the signal. Thirdly, provisions on technological protection measures had been contested by some Member States. There was a proposal to delete such provisions and other proposals considered it an essential element of the draft treaty. Some had feared that such provisions amounted to mandate the use of technological protection measures in the broadcasting sector. The provisions in their current form would not, however, lead to any mandate to use any technological measures. Most broadcasters in the world had not been using technological measures, but some of them were already using them and they could become important tools to structure the market. Their very purpose was to organize the market in such a way that e.g. only the paying recipients could receive certain programs. They could also be important tools for the fight against piracy in the area of music, films and other content. Technological protection measures used by the broadcasters were still in a developing phase and consumers' expectations had to be taken into account when implementing such measures. The functionalities of the technological protection measures, for instance the possibility of recording for time shifting purposes in a private environment, had to take into account the expectations from consumers. Badly functioning technological protection measures which did not meet consumers' expectations would be rapidly out of the market. Several rounds of discussions article by article had taken place in the early phases of the work, and then three rounds of discussions based on a cluster approach had been carried out. The possibility of dropping certain alternatives had been addressed, but no result could be achieved. The discussion would now focus on a number of the most relevant substantive issues.

17. The Chair indicated that informal consultations would be held between delegations over the course of the meeting. Delegations would need to consider the following questions: First, what kind of basic proposal needed to be finalized. Second, at what date the diplomatic conference could be convened, and finally the Committee would need to decide on the preparatory arrangements. Following the consultations to be held, the Chair could submit a working paper on the main issues which were those where alternative proposals could be still be found. The principle would be to maintain all the proposals on the table until the last stage in order to meet the principle of inclusiveness, which was one of the guiding principles of the negotiations. The discussion would first start on the cluster of rights, and more specifically on Articles 9 through 16, which would constitute the first cluster. The second package would consist of limitations and exceptions and technological measures together.

18. The Delegation of Indonesia asked when the groups would be allowed to deliver their joint statements.

19. The Chair indicated that the present afternoon session would be the appropriate moment for such statements. The floor was now open for discussion on the package of rights in the Revised Draft Basic Proposal, and in particular on the right of retransmission. The right of communication to the public was granted under a very limited form under the Rome Convention which provided for a very specific case of making television programs visible and audible for the public, in places where people could get access against an entrance fee. The right of fixation, which was the other important right was laid down as an exclusive right. Downstream rights after fixation were provided for in certain cases, including cases where the fixed-broadcast would be made available on an on-demand basis. The protection in relation to signals prior to broadcasting was covered in some countries under the notion of broadcasting, but in other countries it was not considered to be part of the broadcast because such transmission were considered to be point-to-point transport of content to be broadcast to the public at a subsequent stage. The discussion would now be article by article but organized in a cluster. All the rights which had to be discussed formed part of the Member States' proposals and no new right had been created in the drafting of the working document. All elements could be found in the government proposals. In the Rome Convention, the right of re-transmission only covered re-broadcasting, so what was lacking in the protection granted to broadcasting organizations was the possibility for the broadcasters to have some control over the exploitation of their signals in the case of re-transmissions of the result of their investment over cable networks, as well as over computer networks and over other existing or future distribution platforms. Retransmission is always made by an organization other than the original one. The right of fixation related to the situation where the signal broadcast over the air, or being transmitted by cable, was captured by someone having a device capable of fixing that signal and the flow of programs carried by it, in such a way that it could then be perceived by a device and communicated further. The lifetime of a fixation could be short or long depending on the cases. One of the downstream rights, the right of distribution, had disappeared from the first Draft Basic Proposal, but some delegations had indicated that it was an important part of the overall protection. The signal had faded out when copies were distributed and for that reason, this was an area where the protection extended beyond protection of the live signal, to the whole investment and to the output that the signal represented in the form of fixation and distribution of copies of that fixation. This part of the protection would constitute an extension of the protection beyond the physical phenomenon of the live signal; that form of protection was already in place in much national legislation. The right of making available would relate to the situation where a fixation included in a database or on a server was made accessible to the public in such a way that people may access it at a time and from a place that they want. That way of supplying programs was

another way of exploiting broadcasting organizations' output. The right of transmission following fixation was sometimes also called deferred re-transmission, but it was more accurate to refer to a new transmission on the basis of a fixation. The right referred to a transmission with some delay between the act of fixing the transmission and the new transmission on the basis of that fixation.

20. The Delegation of Indonesia, speaking on behalf of the Asian Group, reiterated that it would like to see progress in the SCCR towards a broadcasting treaty for the protection against signal piracy, ensuring that the rights of content owners as well as access to works in the public domain would not be compromised. It was essential to reach consensus on the signal-specific approach and the current Draft Revised Proposal on traditional broadcasting before proceeding to a diplomatic conference. Some rights and measures in the draft proposal went beyond signal piracy. That broad approach had a negative impact on public interest, access to knowledge and information, access to material in the public domain, cultural diversity and the rights of content owners. It was important to include clauses on general principles and public interest in the future treaty, in order to preserve the freedom of contracting parties to promote access to knowledge and information, national educational and scientific objectives, as well as the public interest in areas such as cultural diversity. Those clauses also provided solid grounds to curb anti-competitive practices. In consequence, great importance was attached to proposed Article 2 on the general principles, Article 3 on protection and promotion of cultural diversity and Article 4 on defense of competition.

21. The Delegation of Egypt expressed concerns regarding the legal drafting of the Revised Basic Proposal. It was very important to compare the wording of certain provisions to ensure that they be in accordance with one another. A certain amount of contradiction had been detected in Articles 6 and Article 9. Article 6 on the scope of application stated in paragraph (1) that the protection granted under the treaty extended only to signals used for the transmissions by the beneficiaries of the protection of the treaty. In other words, the scope of the treaty only covered signal protection. At the end of note 6.1 it was further stated "and not to works and other protected subject matter carried by such signals". It was explicitly stated that the treaty afforded protection to signals and not to content. However, Article 6(2) was in contradiction with paragraph (1) as it stated that the provisions of the treaty applied to the protection of broadcasting organizations in respect of their broadcasts. It was not clear what was meant by broadcasts in that context. It would therefore be preferable to reword that text to state that the provisions of the treaty applied to the protection of broadcasting organizations in respect of broadcasts that were broadcast by broadcasting organizations for the first time, or something to that effect. Article 9, and indeed also Articles 11 and 12, went beyond signal protection. In Article 9 the right of retransmission did not refer to signals as such but rather to broadcasts. Article 11 on the right of fixation referred to signals being transformed into content, as that in fact was what fixation meant. The problem that could give rise to considerable difficulty at the forthcoming conference was that many questions remained unanswered, such as whether there was a link between that treaty and other treaties, such as the WIPO Copyright Treaty (WCT).

22. The Delegation of the Sudan stated that considerable progress had been made on the vitally important question of the protection of broadcasting organizations. The issue was particularly important because technology was continually developing, especially in the field of communications. The drafting difficulties in Article 6, observed by Egypt, merited consideration. It was important to observe that the Rome Convention and the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) referred to copyright and related rights while the present process aimed at the protection of broadcasting

organizations. The new treaty could provide protection to artistic performances being broadcast in any of the ways described in the treaty. It was unclear as to what might happen if something were broadcast without appropriate protection of broadcasting rights. That situation could in fact be detrimental to copyright and neighboring rights. It was necessary to take into account various legal concepts that had already been accepted in the past by WIPO and that were intended to afford protection for all rights and in all cases.

23. The Chair confirmed that broadcasters' rights should not interfere in the content owners' rights. The content owners' rights prevailed as they were laid down and established and the parallel protection of the broadcast enjoyed its own separate protection. One of the main tasks was to prevent any interference between systems of rights that should remain parallel.

24. The Delegation of India stated that it was gratifying that the issue of webcasting had been separated so the focus was exclusively placed on the protection required by the traditional broadcasting organizations. The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention) and the TRIPS Agreement provided the basic framework for the protection of broadcasting organizations, which gave enough flexibility for individual States to provide most specific protection in their national domains. The rights of copyright owners and the rights of the public to access to information and knowledge should not be curtailed while looking at protection requested by the broadcasting organizations. That protection needed to be circumscribed taking into account the objectives that were trying to be achieved in the treaty. It had been argued that before and during the broadcast of program-carrying signals, protection was desirable and to some extent, that kind of protection was already provided for under the TRIPS Agreement. If the intention was to convert TRIPS protection from a discretionary exercise into a mandatory obligation under the new proposed treaty, then all issues should be analyzed from that perspective. The same could be said if the objective was to go beyond TRIPS into a TRIPS plus or Rome plus instrument. However, broadcasting organizations needed related rights only to the extent that rights were transferred to them by owners of intellectual property rights in content. The revised draft basic proposal did not say to what extent the intellectual property right owners actually transferred their rights to the broadcasters and therefore the protection they required should be circumscribed by the limits on the acquisition of those rights. The Delegation of Egypt had highlighted one of the fundamental contradictions of the Revised Draft, as Article 6(1) restricted the scope of the treaty to the protection of signals whereas Article 6(2) and 6(3) went beyond that. Secondly, it was necessary to circumscribe the protection by the limits to which the intellectual property rights from the content owners had actually been transferred to the broadcasting organizations. For example, if a film producer had transferred the right to broadcast his film once to a broadcasting organization, then certainly before and during the broadcast of that film the broadcasting organization needed protection of its signal but once the broadcast was over no rights should subsist because the related right acquired was limited to one broadcast. Subsequent broadcasts and post-fixation rights should not arise because those rights were not originally vested in the broadcasting organization. If the broadcasting organization was an intellectual property right holder in its own right, then certainly it would exercise those rights. The right to prohibit offered a more apt protection than the exclusive rights. Moreover, the Draft only defined the term broadcasting and not broadcast. The broadcast in the latter sense was being used as a noun and not as a verb. As a noun, broadcast was a product and its use for post-fixation rights implied an attempt to extend the rights of broadcasting organizations to the product of their activities without defining what that product was. In the last SCCR the Delegation had described the four intellectual properties that were contained in a broadcast.

The first one was of course the program content, the second could be advertisements, the third could be the look and feel of the channel that was broadcasting, which could be the IPR of the broadcasting organization itself, and the fourth was the scheduling of the total program, which could again be an intellectual property of the broadcasting organization. In other words, it was necessary to specify what was protected under the notion of broadcast. Somebody else could take out only the program content and repackage it, raising the question of whether a repackaged content was or not protected. Finally, at the last meeting it had been made clear that simulcasting and webcasting were not to be included in the Draft. Unfortunately, and because of the principle of inclusiveness that had been followed, some problematic expressions had come back into the text. If those expressions were not modified, netcasting or webcasting and simulcasting could reenter the discussion as objects of protection, which was not the intention of anyone anymore. Therefore, in the definition of retransmission in Article 5(d), the expression “any means of transmission” should be deleted. The same should apply to the expression “by any means, including over computer networks”, in the right of retransmission in Article 9. The right of reproduction in Article 12 again expressed “direct or indirect reproduction in any manner or form”, an expression likely to be interpreted to include computer networks. In the right of distribution in Article 13 the expression “making available to the public the original and copies of fixation” was again open to interpretation as well as “transmission by any means” in Article 14 and “making available by wire or wireless means” in Article 15. In the next Draft the text should be cleansed of such expressions that were likely to be interpreted to include webcasting or simulcasting.

25. The Chair agreed that the treaty should contain all the necessary elements that explained the political and other objectives concerning the status and the position of broadcasters, their role in the area of communications and their role in economic and social terms. Second, the noun ‘broadcast’ was indeed an identified item for discussion and certainly there were other delegations who wished to seek further clarity in that respect. Finally there were several areas where acts and operations taking place by using computer networks were included as the defensive part of the traditional broadcasters’ rights, not as objects for protection. In those areas the traditional broadcasters should enjoy the possibility of authorizing or not authorizing certain exploitation or use of the protected subject matter. That did not make webcasting an object of protection.

26. The Delegation of Iran (Islamic Republic of) supported the rights of traditional broadcasting organizations on the basis of the signal protection approach, but indicated its opposition to rights that went beyond that protection. That was the case of the protection in relation to signals prior to broadcasting in Article 16 and the post fixation rights, which seemed to refer to content and not to signals. The words “by any means” and “retransmission over computer networks” in Article 9 referred to webcasting and should be deleted. The same could be said of the following expressions: the words “by any means” in Article 14 alternatives JJ and KK; the words “in any manner or form” in Article 12, alternative HH, paragraph (1); and finally in Article 15, the sentence after “wireless means” in alternatives R and S.

27. The Chair stated that mention of transmissions over computer networks could be found in the operative clauses on the protection of traditional broadcasters as acts against which the traditional broadcasters had the possibility to exercise their rights. One example of that situation could be that of a traditional broadcaster in one country whose reception area covered a part of another country due to the overlap of reception areas. A webcaster could pick up the signal from the air in that other country and start covering the rest of the country where the original broadcast did not have any coverage. It could be argued that the original

broadcaster should have the possibility to protect its activity of assembling and scheduling programs, along with the investment it entailed, by preventing retransmission of its signal over computer networks. In that way the traditional broadcaster would have the possibility to decide whether the result of its investment would be made available in the other reception area. That would not bring that retransmission over the web within the scope of protection, but would place the retransmission over the web as a defensive element in the operative clauses on the protection of traditional broadcasters.

28. The Delegation of India thanked the Chair for the explanation of the logic of providing protection from a signal being pirated and being broadcast or webcast on the net. While it could completely empathize with that example and the potential loss that the broadcasting organization might suffer on account of such piracy, it also had three basic questions on that analogy. Also, it reiterated that it was completely open to suggestions and discussions on the subject. First of all, the treaty was based on proposals received from various delegations and, therefore, the Delegation would like to understand more clearly and accurately that the proposal made by the Chair was the result of a proposal coming from a specific Member State. The second issue was that if the broadcasting organization of the example, the signal of which was being pirated, was suffering a loss, then also millions of other intellectual property rightowners were suffering the same fate over the net. As related rightholders, broadcasting organizations should not be equalized with other intellectual property rightowners, or granted a higher level of protection as far as transmission on the net was concerned. The third issue was related to the logistics and administration. In the treaty, the Contracting Parties were the Member States and the protection was granted to the broadcasting organizations. If there was a netcaster or webcaster who was exercising an indiscreet activity, it was difficult, given the current level of development of technology, to be able to enforce such obligations by the Member States. The Delegation sought clarification regarding the means at their command in the context and environment of Internet on enforcing such protection. The net was still largely unregulated and means were still under development at technological, administrative and regulatory level, to enable Member States to be able to accept such an obligation. The Delegation expressed its satisfaction about the casting aside of the webcasting issue.

29. The Chair said that one question was directed to the proponents of a broad retransmission right that would include retransmission over computer networks. It remained to be checked in whose proposals the “retransmission by any means” language had been included, and whether the intention of the proponent delegations had been to include also the retransmission over computer networks. The second question was whether the content rightholders in the service area of the web retransmitter would, at the same time, suffer the loss and fate of the original traditional broadcaster. He recalled that the broadcasters’ rights had a modicum of investment as the basic reason for granting that protection. The third question was about enforcement, which was relevant in both cases. If netcasting or webcasting were included in the object of protection, it would be a matter of discussion whether that protection or rights could be enforced. He sought clarification from those Delegations whose countries were advanced in monitoring and developing enforcement systems or had amended their national legislation in that regard. The following questions were relevant concerning the enforcement: how to trace the activities; to whom to address the measures or acts; whether the right to monitor was granted; what was happening in the communications networks; whether the data protection was granted in the same way as in

other areas of communication, including physical mail; and how to identify persons who were committing different acts and engaging in different activities there. Some could be very skillful in hiding in the Internet system. He invited the delegations to undertake informal consultations, in order to tackle the item on limitations and exceptions, as well as technological protection measures, later.

30. The Delegation of Mexico expressed its doubts about the scope of protection to be granted to broadcasting organizations and the existing protection in other instruments. In Article 5 the definition of broadcasting covered wireless transmissions for reception by the public. As signals which were not transmitted to the public were not understood as broadcasting, the Delegation did not agree with those who felt that that provision could put at risk the access to information. The rights under discussion were very similar to those granted by the Rome Convention and the TRIPS Agreement. In Latin America, nearly half of the States recognized those rights in one way or another. If webcasting and netcasting were no longer part of the basic proposal, the Committee should easily be able to make progress and convene a diplomatic conference.

31. The Delegation of Australia pointed out that the noun “broadcasting” had already been used in some treaties, and there was a common understanding among Member States regarding its interpretation. The program-carrying signal, which led to comments on the long-argued question of separating the protection of the signal from the content, was an example of an intangible item that had layers of rights. It referred to the presentation made by Professor André Lucas in connection with a previous SCCR session where sound recordings had been used as an example of items with layered rights on them. It also noted that while the signal was the object of protection, as far as the end-users were concerned, the real matter of interest was what was carried by the signal. Nobody was interested in turning on his TV set to watch an empty signal, if indeed it was possible. The proposed protection for the program-carrying signal did not prevent in any way the copyright owner of the content carried by the signal from continuing to exploit that content in other ways. As to the concern about which rights, if any, and what scope of protection should be given in downstream activities from the fixation of the broadcast, the Rome Convention granted a specific protection regarding those operations. The question was whether indeed there was any justification for providing protection beyond what was already available in the Rome Convention and the TRIPS Agreement for broadcasters. Cable and satellite retransmissions, and most recently Internet retransmissions, seemed to throw up gaps in the protection provided for in those Treaties, therefore a new protection should be given to broadcasters to cover such gaps which were made apparent by the uptake of new technology. It supported, in particular, a right for broadcasters and cablecasters over unauthorized retransmissions of their broadcasts and cablecasts over the Internet. As to other rights in the series of rights provided for in the draft treaty, it supported the protection of pre-broadcast signals, the wording of which would be discussed in subsequent negotiations by the Delegation. Finally, regarding Article 10, which provided for the right of communication of broadcasts to the public, its first preference was the deletion of that article but, if retained, it would prefer the inclusion of provision for a partial or full reservation for that right.

32. The Delegation of El Salvador expressed its support for the work done by the SCCR over quite a number of years. It shared the view expressed by the Delegations of Mexico and Australia, to put an end to the technical work and, at long last, to give the broadcasting organizations the rights that they deserved. It recommended that a diplomatic conference be convened the following year, if possible, as delegations needed time to cast light on areas that remained ambiguous. National legislation of El Salvador already contained a large number of

provisions similar to those included in the draft treaty and even more generous. On the possibility of including webcasting in an optional annex, it stated that its Government and relevant sectors in its country were in favor of that additional protection.

33. The Chair introduced the issues of limitations and exceptions and technological protection measures. He observed that, in earlier versions of the consolidated text, there was a simple article on limitations and exceptions based on the model found in the WPPT contained in two paragraphs. The first paragraph was based on the Rome Convention that permitted the same exceptions applied for the protection of copyright; and the second paragraph contained the three-step test. He recalled that three concrete proposals in treaty language had been presented later by the Delegations of Brazil, Chile and Peru, which were based on lists of permitted limitations and exceptions plus the three-step test. The merging of those proposals, although technically easy, had not been done in order to present a full picture to the Delegations and by virtue of the principle of inclusiveness of small differences and nuances. The questions were whether the approach of using certain examples of permitted exceptions should be taken into the instrument, and how the beneficiaries of limitations and exceptions would be able to benefit of them. He also noted that the Delegation of the European Community had explained in a document the approach concerning limitations and exceptions taken by that regional group of countries in Europe, including the members of the European Community, as well as its acceding States, which included some considerations on the relationship between the use of technological protection measures and the question of how and in which areas the beneficiaries of limitations and exceptions could benefit from those limitations or exceptions.

34. The Delegation of Indonesia, on behalf of the Asian Group, did not support the inclusion of any provisions in the treaty that would directly or indirectly provide for legal sanctioning of technological protection measures. The inclusion of such provisions meant the stalling of innovation or denying the general public rights of access to information in the public domain. Therefore, the Group proposed that Article 19 of the draft text be deleted. Furthermore, the Group maintained that the provisions on limitations and exceptions should not restrict consumers' rights. It should preserve the balance between the right holders and the wider public ability to accept and use the transmitted works. The need to protect free flow of cultural, academic and educational information should be adequately addressed in that particular provision.

35. The Chair observed that there was also a proposal manifested in the working document that set out that technical protection measures should not at all be taken into the instrument.

36. The Delegation of Brazil believed that, with the fusion of the two documents, a lot of its concerns had been contained in the new draft. Its lack of intervention on the previous issues did not mean that it was fully supportive of the language as it stood. There was a series of inquiries and suggestions regarding the wording that it would manifest in due course. It was very hard to express a position on just one single element of the treaty, as there was a need to look at it in its entity. The level of prescriptiveness of limitations and exceptions would have an indirect relationship with the extension of rights provided in the treaty. The treaty as a whole should have a good balance between rightholders' rights and interests of the general public, users and consumers throughout the whole text, not just in one particular part. Its position regarding technical protection measures was that they should not be included in the draft treaty. The Delegation was interested in hearing more from other delegations who had within their legislation a series of exceptions and limitations that applied to technological protection measures, for example, to maintain interoperability of systems or to ensure access

to knowledge and information, as mentioned by the Delegation of Indonesia; to ensure access to scientific knowledge; to ensure the possibility of using information by libraries and disabled persons, and so forth. There was a lot of material in the legislation of certain Member States, for instance, in the European Directive, that could be relevant for the current exercise if the Committee decided to maintain the same extensive listings of exclusive rights. In addition, the Delegation believed that if the treaty addressed the signals, it should actually say so in the text of the treaty. The definition of broadcasting did not use the word “signal” despite the fact that the treaty applied to signal theft. The Delegation was still concerned with the use of “broadcast” in an undefined fashion throughout the articles that referred to exclusive rights. The treaty actually broadened considerably the possibility of broadcasting organizations to exert exclusive rights of economic nature regarding the transmission of their signals. If the rights became greater, there was a need to better define what a broadcast was, whether it was a one minute take of something, whether it was a broadcaster’s full day broadcasting, whether it was something that contained advertisements or the whole scheduling from broadcasting organizations, and so on. The Committee could not move forward if it opted to deal with the whole issue by conferring extensive new exclusive rights without further defining the terms used in the agreement. It was important for members to know exactly what the coverage was. Finally, the Delegation reiterated its position regarding the draft, as expressed in the minutes of the previous session, and the importance of referring to cultural diversity and access to knowledge as a general rule.

37. The Chair noted that the debate was continuing usefully, and addressed questions relating to exceptions and limitations and whether or how to include technological protection measures in the package for final negotiation.

38. The Delegation of the Republic of Korea noted that broadcasting organizations needed protection in order to update their rights and meet the challenges of the digital environment. Provisions concerning technological protection measures should be included at the same level and in the same manner as they had been for phonogram producers in the WPPT. During the thirteenth session of the SCCR, the majority of Members had agreed on the need to update the rights of broadcasting organizations, and that was the foundation for agreement for convening a diplomatic conference. Members were encouraged to continue in the cooperative spirit shown in the previous session, and to use their best efforts to find common ground to move forward.

39. The Delegation of Singapore noted that its country was a signatory to the WPPT and, at the eleventh session of the SCCR, it had proposed that Article 18 of the WPPT be used as a model, which was now reflected in Article 19(1) of the Draft Basic Proposal. Support was expressed for the convening of a Diplomatic Conference at an appropriate date in 2007.

40. The Delegation of South Africa stated that with respect to the scope of the proposed instrument, it supported limiting protection to the signals used as opposed to the subject matter. It noted the statement by the Delegation of India, seeking more clarity in the terms used, in particular “broadcast”. Further clarification of the object of the treaty was also required, to avoid slippage and to ensure consistency. With reference to the statement by the Delegation of Iran (Islamic Republic of), there was a need to remove references in the draft text to the phrases “by any means” and “over computer networks”, also to ensure consistency and avoid slippage. The object of protection must consistently be traditional broadcasters. Second, with respect to limitations and exceptions, it supported the statement by the Delegation of Brazil, delineating controls on limitations and exceptions. The list of limitations and exceptions should be comprehensive but not exhaustive, so as to allow

domestic legislatures to shape national law according to local needs and culture. The list should therefore be open-ended, giving cases of exceptions and limitations with a view to preserving freedom of expression, and permitting uses including personal use. The goal was to balance exclusive rights, providing strong rights while allowing space for freedom of expression and public values. Third, the question of technological protection measures was recognized as an issue that required careful attention so as to understand the legal obligations. The treaty should not be interpreted as limiting parties' rights to interpret the treaty with a view to avoiding monopolistic practices. An impact study was called for, to examine practices of enforcement of technological protection measures, and to balance the economic interests of broadcasting organizations and freedom of expression.

41. The Delegation of Egypt referred to the issue of limitations and exceptions, and outlined two possible modalities to approach that article in the draft text. The first, general, method would allow contracting parties to show flexibility in their elaboration of limitations and exceptions within the framework of general guiding principles. The second method would be more comprehensive and specify detailed situations in which limitations and exceptions would be acceptable under national legislation. The first approach was more flexible, and established general principles to be taken into account by national legislatures without limiting them, and was therefore supported. The question was to find a means to balance interests in protecting intellectual property, the interests of broadcasting organizations, and the important public interest represented by the legislators. Appreciation was expressed for those experts who had contributed to discussions on the project before the Committee, and whose observations sought to make the draft text more logical and to avoid disputes that might arise during a diplomatic conference.

42. The Delegation of Chile referred to the issue of limitations and exceptions, which had been the subject of its proposal in 2004. That proposal had concerned education, persons with disabilities and libraries, and was therefore broader than the goals of the draft treaty under discussion, and it had drawn exceptions from Article 15 of the Rome Convention. Exceptions and limitations were a fundamental tool to achieve balanced protection, as recognized by delegates in the negotiations concerning geographic indications that took place in the World Trade Organization (WTO). It was thus important that the treaty include exceptions and limitations. Reference was made to the document on limitations and exceptions submitted by the European Union, which included a long list of exceptions useful to States, and was along the same lines as the models proposed by Brazil, Chile and Peru. The model put forward by the European Union was also noteworthy because it included compulsory exceptions that were so important they could not be cancelled by contract. The Delegation of Chile did not demand that exceptions be compulsory. No support was expressed for the inclusion of technical protection measures, and it was important to ensure that they did not preclude the legitimate exercise of limitations and exceptions or access to content in the public domain. It was not useful to limit exceptions to technological protection measures, particularly those that protect rights. Emphasis was placed on the importance of defending competition.

43. The Delegation of the Russian Federation expressed hope that the meeting would reach a decision for the convening of a Diplomatic Conference. The package of rights in the latest draft treaty text would ensure that the rights of broadcasting organizations were adequately protected and was an important step for the community, business and broadcasting organizations. The package of rights would provide protection to broadcasting organizations against piracy. Technological protection measures were essential to that protection and, in that respect, the draft treaty text was consistent with international practice and with the laws and standards established by the WCT and WPPT. The domestic laws of most countries

already recognized a higher level of technological protection measures. The new treaty would reassure countries that they enjoyed the right to set the level of technological protection measures in their domestic legislation. The Committee's work to date had overcome all stumbling blocks, and support was expressed for moving to a Diplomatic Conference.

44. The Delegation of the United States of America stated that provisions concerning technological protection measures were important in order to update protection for broadcasting organizations. A technical point was made concerning the statement of the Delegation from the Republic of Korea concerning the technological protection measures provisions in the WPPT, and it was noted that Article 19 of the draft text contained no alternative language solely drawn from the WPPT. It requested that an alternative be included that consisted of Article 19(1), alternative MM, so that delegations could choose the same language as provided in the WPPT.

45. The Delegation of Canada reminded the Committee of its 2003 submission on retransmission, which had been repeated in the last Committee session, as referenced in paragraph 169 of the report, and which it, in the spirit of inclusiveness, wished to have included in the draft treaty text. Parties should have the ability to submit reservations to Article 9 on retransmission. It was also proposed that Article 22 (on reservations) should be amended to contain an express reference to Article 9.

46. The Delegation of El Salvador supported the inclusion of Article 17, alternative WW, in the first paragraph, taking into account that secondary legislation would then develop its substance. The list of exceptions and limitations should not be exhaustive, to allow a margin of freedom to parties. It supported Article 19, alternative MM, and not a limited provision as had been included in the WIPO Internet Treaties. The preferred approach reflected the situation in other Central American countries and was not an innovative provision.

47. The Delegation of Nepal noted that a separate copyright law existed in its country which was compliant with the Berne Convention, the Rome Convention and the TRIPS Agreement, and included provisions similar to those in the draft treaty text. For example, broadcasting organizations enjoyed 50 years of protection. The diplomatic conference should be given the possibility to clarify and include provisions on technological protection measures, retransmission and signal protection.

48. The Delegation of Australia stated that it had previously preferred Article 17, alternative WW, reflecting the WPPT. Insofar as alternative XX incorporated the list from the Rome Convention, it could support keeping that approach on the table for consideration. It was consistent with its national copyright law to provide for specific targeted exceptions. While reaching agreement on the list could pose difficulties, the provisions in the Rome Convention provided an acceptable starting point for discussions. For example, support was given for exceptions for non-commercial use by libraries and archives, but the scope of that exception was debatable. One approach was to include a non-exhaustive list of exceptions and limitations that were also consistent with the three-step test. Such an approach had been taken in the European Union Directive, although that list had been exhaustive. Elements of the suggested approach were contained in all proposals before the Committee.

49. The Delegation of Mexico supported Article 17, alternative WW, which was consistent with other legal instruments and treaties mentioned. It could be risky to provide an exhaustive list of exceptions and limitations. Technological protection measures were considered to be vital to provide adequate protection for broadcasting organizations.

50. The Chair resumed the afternoon session to continue discussions on limitations and exceptions. He noted that the session would have to break to allow consultations to continue.

51. The Delegation of China informed the Committee that on May 10, 2006, the State Council of China has adopted the Regulation on the Protection of Rights of Communication through Internet Network, which had entered into force on July 1. The Regulation contained detailed provisions on the issues of the Internet communication right enjoyed by copyright owners under the Chinese Copyright Law, limitations and exceptions to rights and the liability of Internet service providers. In addition, China was actively carrying out preparatory work to adhere to the WCT and the WPPT which was expected to happen before the end of the year. Limitations and exceptions formed an important part of the draft treaty and they were also an important way to balance the rights of broadcasting organizations against the rights of the general public. While protecting the rights of broadcasting organizations, it was crucial to guarantee the public interest or at least avoid unreasonably effects on the public interest. The Delegation was of the view that the alternatives of Article 17 provided a very good basis for discussion and hoped that the treaty would contain generally phrased provisions, because using a list or being very specific might be more operable and more clear, but flexibility would be reduced. It was concerned that an exhaustive list might not be favorable for making provisions suitable for domestic situations in national legislation.

52. The Delegation of Switzerland supported all aims to finalize the treaty in order to enable the General Assembly to convene a diplomatic conference. In the field of exceptions and limitations, it was in favor of alternative WW, because that provision corresponded to the one contained in the WPPT. With regard to Article 19 on technological protection measures, it supported the suggestion of the Delegation of the United States of America to have the same wording on technological protection measures as in the WPPT.

53. The Delegation of the Dominican Republic was in favor of alternative WW, which was in line with its national legislation. However, it would remain flexible as to the proposal made by Chile, Peru and Brazil, since it believed that it might allow the Committee to balance the provisions of the treaty, despite the fact that its national legislation did not have provision covering such measures. Its Delegation would not be opposed to its inclusion in the treaty, including technical measures of protection. However, it believed that no provisions agreed to in the treaty should be to the detriment of the public nor to the copyright rightholders.

54. The Chair declared a break in the session to enable further informal consultations between delegations.

55. The Chair resumed the session, stating that many informal contacts had taken place, which had allowed for some progress in the discussions and such results would not have been possible within the plenary sessions.

56. The Delegation of Nigeria, on behalf of the African Group, stated that it was ready to participate as positively and constructively as possible and hoped that progress would be made in discussing all substantive issues and would allow to move on to the next course of action. The Group noted that the Treaty had been on the negotiating table for nearly a decade and regional consultations had been held to explore the feasibility of convening a Diplomatic Conference. Progress had been made in terms of improving the basic text of the treaty by reflecting the concerns and interest of Member States. These concerns transcended the purely technical considerations related to the treaty and had to deal with important political and

social economic implications linked to the adoption of such a treaty. Those concerns included matters of general public interest, especially in developing and less developed countries, access to information and knowledge, the rights of other stakeholders such as performers and artists who contributed to the production of programs. The question of the term of protection was also highly significant. While the African Group had no objection in principle to a 20-year term of protection, it also noted that some Member States had longer periods of protection in their national legislation. Control over access to knowledge and information was a sensitive issue which required a note of caution. Broadcasting was a knowledge-sharing tool, and its control and restriction had to be thoroughly examined. In view of the complexity of the issues discussed, an impact study or assessment of their consequences at national level could be necessary. The protection of technological measures and the impact of provisions on local cultural industries were some of the key concerns of Member States that needed to be addressed. Exceptions and limitations were also important provisions of the draft treaty. They provided States, especially developing and least-developed countries, the policy space needed for determining their priorities and protecting the public interest. Guidelines and principles had to be formulated. It was also the Group's position that the holding of the diplomatic conference in 2007 would be a more advisable option. The African Group was willing to join the majority consensus in relation to that last point.

57. The Delegation of Morocco stated that the Committee had been working for many years on the draft treaty and had studied the topic from all its aspects. Many delegations had submitted proposals which had formed the basis of the Draft Basic Proposal before the delegates and many delegations felt that the text provided an ideal framework for the holding of the diplomatic conference to be held in the first semester of 2007. Some matters had to be checked closely and other issues had to be solved before moving to any diplomatic conference. However, some of these matters were not only linked to broadcasting as it had been rightly pointed out by the Delegation of Nigeria on behalf of the African Group. The articles relating to rights and to definitions and in particular Articles 5, 7 and 9 required careful study. In relation to exceptions and technological measures, a new domestic legislation had been recently promulgated which had opened the doors to the protection of technological developments. The protection of broadcasting organizations could not be achieved without having technological protection, which meant that the protection of technological measures was necessary to protect the rights granted. The door had to be opened to define those measures. The same reasoning applied to exceptions and limitations and the necessity to preserve a balance with the public interest and the free access to information.

58. The Delegation of Kenya supported the position of the African Group as articulated by the Delegation of Nigeria and was hopeful that the negotiations would lead to a consensus on the holding of a diplomatic conference at an appropriate date in 2007. The treaty on the protection of broadcasting organizations had long been overdue. Progress had been achieved in trashing out the issues of webcasting and simulcasting and the Delegation supported the decision to address those issues in separate processes. It supported the provision of a non-exhaustive list of exceptions and limitations that would give flexibility to Member States to accommodate their development needs. The inclusion of technological measures was acceptable, but it recommended proceeding with a study on their impact on access to knowledge and information. The rights to be granted to broadcasters should not impede on the protection and promotion of cultural diversity as well as defense of competition.

59. The Delegation of Benin firmly believed in the future treaty on the protection of broadcasting organizations and even considered it indispensable in a rapidly changing world. Broadcasting organizations needed to protect their investments with a view to better serving the public interest. That was an essential element in developing countries where broadcasting organizations were of capital importance in the dissemination of information and education. Broadcasting organizations had to be encouraged to continue with their mission. The protection to be granted had to constitute a step forward with respect to existing treaties and compared to the TRIPS Agreement. There were a number of critical points to be examined to ensure the progress of the discussions. Article 9 had to be reviewed in the light of Articles 5(a) and 7(b) in order to avoid any ambiguity, as well as exceptions and limitations and technological measures. Benin had adopted a new domestic legislation in 2003, which contained a number of provisions along the same lines as the technological measures devised in the draft treaty. The provisions had to provide protection in a reasonable manner, which would not constitute an obstacle to the development of broadcasting organizations. Signal theft could not be accepted and obstacles to the work of broadcasting organizations had to be prevented. The holding of a diplomatic conference in the course of 2007 was fully supported.

60. The Delegation of Egypt supported the position expressed by the African Group and the Delegation of Morocco and believed that after eight years of discussion the main provisions of the draft treaty were well known to all delegations. In the next discussions, due attention would have to be paid to maintaining a due balance between the rights of broadcasting organizations and the rights of other stakeholders and the requirements of ensuring access to information. Confidence was expressed that the Chair of the Committee would keep in mind all those issues and that the final text to be submitted to the diplomatic conference would also reflect those concerns.

61. The Chair indicated that the debate on limitations and exceptions as well as technological protection measures had come to an end. The next step would be a general assessment of the results of the consultations. The meeting had been different from previous ones in that the possibility for consultations had been provided. He asked whether any delegations would like to report on the results of such consultation. He would then produce a set of conclusions for the following day. He noted that the Committee had discussed substantive items in the area of rights, limitations and exceptions and technological protection measures. The work of the Committee has been based on the Revised Draft Basic Proposal. He asked which steps should be taken to be able to say that the Committee had agreed and sufficiently finalized a basic proposal to recommend that a proposal would be made to the General Assembly to convene a diplomatic conference. It had been proposed to delete the word "revised" and the word "draft" from the cover page of the Revised Draft Basic Proposal to convert the document to a basic proposal, but that would not be sufficient to many delegations. The Committee could not delete any alternative proposals without consensus and without the acceptance of the proponents of those alternatives, since the Committee was working on the basis of the principle of inclusiveness. Thus flexibility was required. Many delegations were ready for a diplomatic conference, and many have also said that the revised draft document was a suitable basis for a diplomatic conference. Other delegations have indicated that it was a difficult basis because there were so many alternatives. It was not possible to agree on all items, he noted, stating that diplomatic conferences were a place for negotiation and agreement. There were a number of issues that were more crucial than others. One very important issue was under which conditions the Committee could accept the document to be converted, according to some instructions and guidelines, into the basic proposal to be published. He recalled that the General Assembly had mandated the Standing Committee to be convened two times to agree and finalize the basic proposal, to allow the

General Assembly to recommend the convening of a diplomatic conference. A third meeting had then been organized. The first draft was considered in the fourteenth session of the Committee in May, when it was decided to prepare a revised version. This Revised Draft Basic Proposal was focused, according to the decision of the May meeting, on the protection of the rights of broadcasting and cablecasting organizations in the traditional sense. The issues on netcasting and simulcasting would be considered separately. Then, the Committee could say that it observed that the preparatory work on traditional broadcasting and cablecasting organizations' rights was well advanced, and there was a consensus on recommending the convening of a diplomatic conference on substantive issues. In the conclusions the Committee would recommend that the diplomatic conference be convened to negotiate and conclude a treaty on the protection of broadcasting organizations and cablecasting organizations in the traditional sense. In the conclusions it should also be pointed out that a basic proposal would be prepared for the diplomatic conference on the basis of the Revised Draft Basic Proposal and the discussions in the present meeting of the SCCR. In the recommendation, there would be a precise date to hold the diplomatic conference, which could be in May or July next year. The task of the preparatory committee could also be listed there for information, together with, if so desired, the reference to consultations and information meetings that should be organized before the diplomatic conference. In that set of conclusions there would be drafting directives or a decision about some substantive aspects of the preparation of the basic proposal. It seemed that it would be advisable to consider a revised preamble to state in a more clear way the objectives of the treaty. There should be a point on the articles on general principles on protection and promotion of cultural diversity and defense of competition. They had been proposed but they had also been contested or opposed, so it should be considered whether the Committee should make a statement explaining what should be done with those articles. In the area of definitions there should be a statement to mention that at least one new definition should be inserted, namely the definition of "signal". One possibility could be to define a signal and explain the term broadcast, which could enable clarity to emerge. The provision on the scope could and should be looked at and clarified.

62. The Chair pointed out that the Committee should clearly state which rights and which kind of protection would be in the basic proposal. There should be an exclusive right of retransmission proposed for consideration. The Committee should mention something about national treatment. Evidently, it had become clear in those discussions that the principle of national treatment was the prevailing principle as far as exclusive rights were concerned. The Chair also referred to the right of fixation which was, in many parts of the world, an exclusive right. In the area of post fixation rights, some Member States had requested those rights to be regrouped as rights to prohibit, which would allow Member States to provide adequate and effective protection in the cases of non-authorized acts, such as reproduction, distribution, use of pre-broadcast signals, done without the authorization of the broadcasting organization. In relation to national treatment, it could be considered that in those areas where the treaty would allow different levels of protection based either on exclusive rights or on the right to prohibit, Member States could be given the possibility to consider whether reciprocity should be allowed. The history of the Rome Convention demonstrated that when the protection of performers was introduced for the first time in an international treaty, it was done in the form of providing a possibility to prevent, because one Member State could not accept exclusive rights to be granted. But when the parties started implementing the treaty they granted national treatment between each other which amounted to extend the coverage of exclusive rights, even if the minimum standard in the Rome Convention was only a possibility of preventing certain unauthorized acts. That situation had prevailed in many countries in the world, in Europe, in Latin America, Asia and Africa. If the scope of the treaty was narrowed

down to the protection of signals, the justification for a mandatory list of exceptions and limitations would be less and a flexible norm of protection would be sufficient. If the scope of the treaty was restricted, provisions on technological protection measures would be narrowed down and could become more acceptable. The term of protection could also be limited to twenty years counted from a starting point. The eligibility clause could also be simplified with a view to allow all WIPO Member States to join the new treaty without any condition. As a summary, ten points needed to be addressed: a revision of the preamble; a decision on how to address the general principle clauses of Articles 2, 3, and 4, definitions, provisions on the scope other than definitions, Articles on rights and protection, national treatment and possibility for reciprocity; provisions on limitations and exceptions; provisions on technological measures, term of protection and eligibility. On that basis, guidelines for the preparation of a basic proposal could be prepared for further discussion. The final basic proposal would be made available to all Member States several months before the diplomatic conference to allow each delegation to assess it and finalize its positions. Information meetings, seminars, and consultations to be proposed by Member States to permit further discussion on the basis of the basic proposal would then follow. The diplomatic conference itself would last for three weeks to allow all delegations to properly look into the details of the basic proposal and set up a working structure and all appropriate committees. The core of the diplomatic conference would then deal with the text and look into it article by article. There would also be room for additional proposals to be submitted by delegations. The negotiations had to be an open-ended process until the final stage. Some debates would have to take place outside the plenary session without reporting. The treaty would have to be adopted by consensus, which would not prevent possible voting in the committees themselves.

63. The Chair noted that the main question was whether the Committee was ready to recommend that the General Assembly decide and conclude that a diplomatic conference had to be convened. In procedural terms, it would mean the opening of the next phase in the process. That kind of decision was part of the procedure to set the target date for the final negotiations. All items and problems on substantive issues were well-identified and known by everybody, so there would be no jump to an unknown future if the door for the diplomatic conference was be opened. The basic proposal to be issued would represent a working paper that would indicate the tentative substantive items to be considered to be included or reformulated in the diplomatic conference. Everybody would have the possibility to work on that concrete basis to prepare other kinds of proposals and innovative solutions for the final negotiating stage. Nobody would be bound to anything that would be in that basic proposal. The basic proposal that was going to be presented might include a number of alternative solutions which would not preclude the expression of other thoughts or presentation of revised proposals, even by those who had already made some proposals. If some substantive items were difficult, then they could still be included in the package without meaning that they would be taken to the final document. Everybody had the right to be against such solutions and to propose other solutions or deletions. It was a question of how much flexibility and confidence the delegations had in the process, so as to let the common sense finally win at the end. Sometimes the process led to difficult solutions, but that was part of the business in a democratic system. The promised document suggested a tentative set of non-binding conclusions. The intention was to keep the process open for all opinions to be put forward and to consider a solution that could allow the diplomatic conference to take place. He invited the Committee Members to present their general observations and information and assessment on a more general nature. He also asked for patience and tolerance from the IGOs and NGOs that wished to take the floor.

64. The Delegation of Japan noted that based on the decision of the last General Assembly, three additional SCCR sessions had been held. Following the principle of inclusiveness, any proposition from the Member States had been included equally in the Revised Draft Basic Proposal as alternatives. There should be no reason for any delegation to resist agreeing on the basic proposal. But, after having consulted with other delegations and listened to the current discussions, it realized that some delegations still could not accept the basic proposal. Although it had some comments on the specific substantial items described in the Revised Basic Proposal, it understood that those issues could be discussed and tackled in a diplomatic conference. The most important target of the meeting was to agree to recommend to the General Assembly that it convene a diplomatic conference early the following year, before losing motivation and momentum towards the adoption of a treaty. The Committee should show its *raison d'être* and step forward from the stage of planning to the stage of action.

65. The Delegation of India referred to the points outlined by the Chair and the scenario, timeframe and “emotional” issues that would be raised in a diplomatic conference. It recalled that, the previous year, the General Assembly had given a mandate to meet twice so as to thrash out the underlying debate on which there was contention so as to find a common way forward to a path for the diplomatic conference. The Delegation had a lot of trepidation and apprehension in going for it as, despite three meetings, the Committee was not yet able to conclude and agree upon, not only unanimously, but even by any other common agreement format, on the core of the issues. After the end of the SCCR/14 session, the Internet and web transmissions were one major obstacle which had been cast aside. However, the current combined text, as well as the Chair’s interventions gave the impression that webcasting in its widest sense was still very much in the center of the proposed treaty. If that was the case, unless and until the Committee addressed that issue, any further attempt to go for a diplomatic conference was likely to lead to more acrimony than acceptance. It strongly urged to look at that issue in greater depth and dissect the pros and cons of having netcasting in any way into the treaty. It recalled that webcasting and its different forms of transmission would be separately discussed and debated, but in several articles retransmission on the web and in many other ways still continued to be part and parcel of the treaty. The SCCR would not be meeting its mandate by merely recommending to postpone the confrontation and let the diplomatic conference grapple with it, because the risk of failure would become much higher. Another important point was the issue of the broadcasters’ rights and the extent to which those rights were enjoyed by them under copyright laws or other intellectual property rights. In the text, as it currently stood, it was not clear what rights the broadcasting organizations would be granted. The broadcasting organizations merely broadcast signals and had a revenue model where their signals were either received on free-to-air basis, under subscription, under advertising schemes or any combination thereof. The broadcasters’ model did not look at the intellectual property that was carried in their signals. It was important to differentiate between the rights of the intellectual property rightholders and the protection to be afforded for the broadcasting organizations. The rights of the intellectual property owners were not always held by the broadcasting organizations, except when they were intellectual property rightowners themselves. If they were using intellectual property-protected content, then the intellectual property rightowners might or might not assign all their rights in all platforms to the broadcasting organizations. Without affording those rights, any protection beyond the protection of their signals would be fraught with a lot of danger as they would trample over the intellectual property rights of others and the rights to access to information and knowledge in the public domain. If the content were not intellectual property protected then giving any protection or post-fixation rights would make a mockery of it. Therefore, it would be important to define the extent to which the broadcasting organizations acquired intellectual property rights, either under the new treaty or under other treaties which

governed intellectual property rights. The third point was that if the Committee needed to go forward for a diplomatic conference, it needed first to grapple with the core issues and produce a commonly acceptable draft. If those two issues, which were at the heart of the treaty, were not addressed and brought under some common understanding, the “going up the garden path” to a diplomatic conference was likely to end up in a fiasco.

66. The Delegation of the Russian Federation recognized that the Committee’s work had been based on the principles of compromise and understanding. It had allowed the delegations to prepare a document which was then ready for a diplomatic conference. The most difficult and thorny issues had been removed, including any reference to webcasting. It recalled the Committee’s commitment with the society and other stakeholders to ensure that a future treaty provided appropriate protection for the broadcasters’ rights. The current version of the document did not talk about webcasting but rather about protection of traditional broadcasting networks from the illegal use of their signals. The document did therefore give an opportunity for future development of culture and information in its broader sense. Not adopting a treaty would hinder the future development of broadcasting, in general, and television, in particular. The Delegation said it stood ready to work on any details that might remain outstanding or any proposal that might need to be further discussed. It agreed with those who wanted to move to a diplomatic conference.

67. The Delegation of Mexico expressed its appreciation for the Draft Basic Proposal which was both inclusive and flexible. After many sessions of the Standing Committee, and many regional consultations, there were some details and technical issues to work on. However, it believed that the process was sufficiently mature to ask the General Assembly to call a diplomatic conference in order to discuss the unresolved issues.

68. The Delegation of the Philippines believed that the work of the Committee to produce a draft basic proposal was already at an advanced stage. The text discussed for almost a decade was ripe enough to go to the next level, which was a diplomatic conference. On the other hand, there were legitimate questions that had been raised by certain delegations. It had confidence that the Chair would be able to use the necessary mechanisms to address those concerns. The Delegation therefore was prepared to support the convening of a diplomatic conference, limited to the protection of traditional broadcasting, and present a recommendation to that effect to the General Assembly.

69. The Delegation of Brazil said that, during the first two days of this meeting, it had been listening with interest to the news on the development of a series of bilateral meetings that had gone on regarding the redimensioning of a basis for a possible future treaty on broadcasting. It noted that certain delegations tended to follow a more narrow approach towards dealing with the issue, more or less along the lines of a series of points that could perhaps guide the preparation of a new draft basic proposal. The Delegation was willing to understand and even to support to a certain extent the idea that perhaps the treaty could deal with a more narrow range of rights focusing on the right of retransmission. Many delegations were ready to remove the exclusive post-fixation rights from the treaty, if the exclusive rights of retransmission were dealt with adequately. For certain members, it would be imperative that the right of retransmission could be applied, at least, in a defensive manner, as a right to prohibit in any medium, including transmission via the Internet. The question was to what extent the latter became then a treaty that covered webcasting and simulcasting. It was the one-million-dollar question that needed further exploration and study. However, the general approach of narrowing down the rights, focusing on retransmission being merely defensive, regarding protection in the Internet was a good general direction. If Delegations had made

progress on substance though some crucial points, they had also taken a step back in terms of procedure regarding a decision on the convening of a diplomatic conference, because a draft basic proposal was needed beforehand. The Delegation could not embark on such an important decision based solely on a few general instructions or guidelines for the Chair to prepare a new draft document. The issues were extremely complex and sensitive to all, and it was not only a question of developing countries. The Committee had been through a series of different drafts before and could not take a decision on a diplomatic conference without knowing what the basis of the diplomatic conference would be. Document SCCR/15/2 had been prepared following the approach that the Delegation had supported in the last meeting. It meant that delegations would go to a diplomatic conference with a document that contained more or less the full range of options and positions that had been put forward by members. It meant that the provisions supported by the Delegation, for instance, Articles 2, 3 and 4, the issues of exceptions and limitations, TPMs and others, were essential elements that would allow it to decide upon convening a diplomatic conference. But if they were discarded and not referred to in any precise terms anymore, then the Delegation would no longer be in a position to take a decision on the convening a diplomatic conference.

70. The Delegation of Argentina reiterated its support for negotiations in order to achieve agreement on a basic proposal in such a manner that the SCCR could achieve its goal on the recommendation of a diplomatic conference on traditional broadcasting. While the efforts to include all different positions in the Proposal were appreciated, some elements in the draft referring directly or indirectly to webcasting should be deleted as they remained outside the scope of a treaty on broadcasting. However, the protection of cablecasting along with over-the-air broadcasting was not a problem.

71. The Delegation of Iran (Islamic Republic of) praised the prevalence of inclusiveness in the new Draft Basic Proposal. Inclusiveness should apply to both substance and procedure in order to finalize the work in a transparent manner. The scope of the treaty should be limited to traditional broadcasting, namely broadcasting and cablecasting. Two or three pages with references to webcasting and simulcasting had been identified in the present text. Some ambiguity also remained regarding the objective of limiting protection to signals and not contents. Also, the final provisions of the treaty had not yet been discussed. Before the diplomatic conference there should be an occasion for Member States to revisit the text and obtain clarifications on a number of issues.

72. The Delegation of Indonesia reiterated its position in favor of expediting the work of the SCCR towards the convening of a diplomatic conference. However, the mandate given by the General Assembly requested the SCCR to agree and finalize a basic proposal in order to enable the General Assembly to convene the diplomatic conference. Therefore, the first thing was to agree on whether the Draft Basic Proposal was acceptable to all delegations. Concerns had been raised by many delegations on the existing draft. In line with the proposal made by the Delegation of the Islamic Republic of Iran, it appeared necessary to revisit the Draft Basic Proposal. Greater clarity was needed in areas such as the scope of the treaty, in particular, whether a signal-based approach or a rights-based approach would be followed. There were no more documents about webcasting. However, as clearly mentioned by many delegations previously, it seemed that there were some provisions in the Draft Basic Proposal that could refer to webcasting. Those references should be deleted. The proposal made by the African Group regarding impact studies was worthy of consideration. Before convening the diplomatic conference, impact studies should be available to facilitate in particular the negotiations by developing countries.

73. The Delegation of South Africa welcomed the efforts to narrow the scope of the treaty to signal protection. Comments from other delegations concerning inconsistencies in the documents merited detailed attention. Consistency was especially needed in regard to webcasting. It was necessary to finalize an agreed basic proposal before committing to the diplomatic conference. To that extent, a meeting should be convened to look at the Draft Basic Proposal. The meeting would eliminate the risk of not agreeing at the diplomatic conference and provide adequate preparation for the same.

74. The Delegation of Chile stated that convening a diplomatic seemed premature. Some articles had three or four alternative proposals. Others, such as the provision on technological measures, could indeed be eliminated, although the latest proposals represented a certain improvement. As indicated by other delegations, it was insufficient to remove webcasting from the Treaty. It was necessary to ensure that the issue did not remain anywhere in the Treaty.

75. The Chair introduced the Draft Conclusions of the SCCR (attached as Annex 1 to this report). A first question to resolve was whether the agreed revised basic proposal was acceptable as the main basis of discussions, so it could be converted to a basic proposal of a diplomatic conference. The second question referred to the intervention by the Delegation of Brazil requesting to have an agreed basic proposal for consideration before authorizing the convening of a diplomatic conference. Also the General Assembly had stated its position in favor of agreeing and finalizing such a text. A possibility was to establish instructions on how to draft that basic proposal, but that prompted a reflection on how strong such instructions should be made in order that the process could continue, and how they could be reinforced in order to give sufficient guarantee to the concerned delegations. Third, the Delegation of Brazil had pointed to a very important issue concerning the general direction where the treaty would be going if it was to narrow its scope, together with the range of rights and obligations. There was a willingness to work towards that end. The principle of inclusiveness had been mentioned on numerous occasions, and it was clear that it was prevailing in the process and should continue to prevail in preparing the basic proposal. However, at the same time there were delegations asking that one or another element should be deleted. That was not inclusiveness. An attempt should be made to be totally inclusive under certain conditions and understandings and without bluntly giving *carte blanche* to go further in directions that were unacceptable for many. There was a proposal to hold another meeting to look at the text of a basic proposal. As there was no possibility to look at the text during the present SCCR session, the basic proposal should be prepared according to the instructions by the Committee. There was a claim that, if a decision on convening a diplomatic conference was not taken in the General Assembly, the whole entity of broadcasting and webcasting as a single package should be restored and reintegrated with all its aspects, also covering webcasting and simulcasting.

76. The Delegation of South Africa referred to its previous intervention and clarified, after receiving questions from several delegations, that it was necessary to see the revised basic proposal before committing to the diplomatic conference.

77. The Delegation of India requested a clarification regarding the section on Instructions for the Preparation of the Basic Proposal in the Draft Conclusions that had been circulated. Several items were listed there and it was unclear whether delegations were supposed to contribute to each one of them.
78. The Chair stated that indeed the intention was to go through those items one by one. However, some items were interconnected, and there were no answers without jointly considering other items. The intention was to ask whether, for instance, a given item should be retained as it was, or whether a given item should be deleted, or whether it should be reformulated. Such crucial corrections should be made in order to elaborate functional instructions.
79. The Delegation of India asked what would be the procedure for that exercise and whether questions would be formulated point by point and also whether every delegation would have an opportunity to respond to each point, or to all the points together.
80. The Chair noted that the time was becoming short and it would be impossible to have a proper debate around every issue. At some time, a working hypothesis could be offered by the Chair to the Committee which could indicate whether or not it was acceptable. In some cases discussion would be possible.
81. The Delegation of India asked how divergence of views would be reflected in the instructions.
82. The Chair stated that, according to the principle of inclusiveness, if there were two options, both would be presented in the next version of a basic proposal.
83. The Delegation of the European Community, speaking also on behalf of its member States and the acceding States of Bulgaria and Romania, believed that the points as set out in the Draft Conclusions were inextricably linked and expressed some doubts as to whether a point by point approach in the time available would be the most useful way forward. At the appropriate moment it would deliver a comprehensive statement on the list of points that had been provided.
84. The Chair noted that consultations had resulted, in his assessment, in a situation where many delegations were ready to accept the main parts, and some delegations were ready to accept most of the proposals on preparatory steps towards the holding of a Diplomatic Conference. Many delegations would consider the Revised Draft Basic Proposal acceptable as a basic proposal for that purpose. The text included all-important proposals, and clarified which items needed further negotiation at the Diplomatic Conference. The question then was whether drafting instructions could be formulated sufficiently clearly to take the next steps in the preparation of the treaty. A document containing instructions for those next steps had been drawn up by the Chair and distributed in the morning session to delegations. In view of the fact that many items in the text were cross-linked, it was not advisable to have a point-by-point deliberation of items in isolation or in series, as it would be very difficult to explain links once deletions or additions were made. The question was whether Members could accept a procedure whereby the revised text could be accepted as the basic proposal, or whether further drafting was required and under what conditions.

85. The Delegation of Uruguay commented generally that note should be taken of the final users of broadcast material, and drew attention to the link between human rights and intellectual property. No new intellectual property treaty could contravene human rights, and access to knowledge and respect for the public interest was most important. Article 1 of the draft text should provide that no article in the treaty would run counter to human rights, including any provisions of human rights treaties such as the Convention on the Rights of the Child. That Convention reflected the common view of the world community, that the overriding interests of children should be borne in mind when negotiating agreements on issues such as trade and intellectual property. Article 13 of that Convention provided that: "The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice." Article 28 of the Convention provided that "States parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: ... (d) Make educational and vocational information and guidance available and accessible to all children". The link between intellectual property and human rights was acknowledged, and a balance needed to be found between them in the proposed treaty.

86. The Delegation of Pakistan stated that there should be an opportunity to revisit the text of the agreement to ensure that webcasting and other contentious references were removed. Agreement on the text was required before moving on to a diplomatic conference. Clarification was required as to whether the preparatory committee would discuss only the modalities of the diplomatic conference, or would discuss contentious issues as well.

87. The Chair responded that such technical questions were best answered by the Secretariat, but noted that the opportunity of the gathering of delegations for the preparatory committee meeting could be used to discuss more than merely technical issues. Substantive issues could be discussed at around the same time, but not technically in the same meeting.

88. The Delegation of Pakistan suggested including a sentence that consultations and informal discussions on the text could also be included in ensuing meetings.

89. The Chair thanked the Delegation of Pakistan for the suggestion that the occasion of a Preparatory Meeting could be used to facilitate informal discussions.

90. The Delegation of Norway favored moving to a diplomatic conference in 2007 and concluding a treaty to protect broadcasting organizations in line with the updating of protection of other rightholders. It was noted that discussions on this issue had been ongoing for more than eight years, and many different texts had been drafted, which the Chair had done a great job of redrafting into the current document SCCR/15/2. The current Draft Basic Proposal text could serve as a basic proposal for a diplomatic conference in 2007.

91. The Delegation of the Russian Federation stated that the current draft text provided an excellent basis for progressing to a diplomatic conference. Outstanding issues could be considered by specialists and technical experts in the context of the diplomatic conference, and the current draft text was acceptable as a basic proposal for that purpose.

92. The Delegation of South Africa stated that there existed a good basis for finding agreement and consensus at a diplomatic conference. The Delegation welcomed the narrowing of the object of the proposed treaty, and noted that further input was required on limitations and exceptions, as stated by the representative of the African Group, and on non-exhaustiveness of a list of limitations and exceptions. With respect to technological protection measures, it preferred that it be indicated that they were specific to signal protection.
93. The Delegation of Mexico expressed its support for the draft text, and for convening a diplomatic conference with one proviso, that discussion on outstanding issues should be enabled within the context of such a conference.
94. The Delegation of Egypt noted that the draft text suggested a term of protection of 20 years, whereas the African Group had proposed that the text should provide “a minimum of 20 years” to give leeway to countries to provide an appropriate term for national conditions.
95. The Chair confirmed that both alternatives in the draft text referred to a minimum period of protection of “at least” a certain number of years, and noted that this could be clarified.
96. The Delegation of India questioned whether the draft text in document SCCR/15/2 should serve as the basic text for a diplomatic conference, or whether the earlier draft on instructions for the preparation for a basic proposal should be followed. If document SCCR/15/2 were used as the basic proposal, then it would be a problem that the text was riddled with inconsistencies and did not reflect unanimity of view on any subject or article. Therefore, it suggested that the Committee merely report to the General Assembly that differing views had been expressed, and place those views before the Assembly for decision. It could not accept that the current Draft Basic Proposal should be treated as a basic proposal for a diplomatic conference.
97. The Delegation of Iran (Islamic Republic of) requested clarification concerning paragraph 1 of document SCCR/15/2, and noted that in previous sessions there had been a consensus that that element should be excluded. Clarification was also sought on whether the question for decision by Members was whether document SCCR/15/2 should serve as a basic proposal.
98. The Chair advised the Committee not to progress by going specifically through individual items in the draft text, as that would replicate the work of the diplomatic conference. He clarified that the Committee was considering whether Document SCCR/15/2 could serve as a basic proposal for the diplomatic conference.
99. The Delegation of Switzerland supported the statements made by the Delegations of Norway and many others, that the time was ripe to progress to a diplomatic conference, and that Members should not wait too long, and risk that the subject was overripe. Document SCCR/15/2 could be usefully renamed as a “Draft Basic Proposal”. The existing draft text should serve as a starting point for the diplomatic conference.

100. The Delegation of Benin supported the endeavor to move towards a diplomatic conference. It supported the list-approach towards exceptions and limitations, provided the list was non-exhaustive. The term of protection should be clarified to provide that it was a minimum term. It asked whether outstanding issues could be resolved before the diplomatic conference, and how much of such work could or should be done before the start of the conference.

101. The Delegation of Turkey favored convening a diplomatic conference, and requested two clarifications. First, concerning working procedure, it asked whether Members would be free to discuss issues not listed among the Chair's instructions for preparation of a draft basic proposal. Second, it asked whether the preparatory committee would take up issues about the method of consideration of the draft basic proposal, such as the order of consideration of the articles of the basic proposal text.

102. The Chair remarked that the preparatory committee meeting would have the specific purpose of preparing for the diplomatic conference, including drawing up rules of procedure and lists of governments and observer organizations to invite, and would address purely organizational matters rather than substance. The diplomatic conference itself would organize its own work plan. Another question, as raised by the Delegation of Pakistan, was whether a further consultation meeting could be held in conjunction with the preparatory committee meeting, although not formally combined with it. States would be free to raise any substantive question at that time, and even the draft basic proposal would not exclude States from raising any question, considering all relevant issues and making deletions or amendments.

103. The Delegation of Brazil remarked that it was able to exercise considerable flexibility in the meeting because document SCCR/15/2 was inclusive of all proposals, and because it was clear that webcasting and simulcasting were excluded in accordance with the decision taken at the last session of the SCCR. As had been stated by the Delegation of India, the draft text contained many inconsistencies, and there was no real agreement on the document, but it could support working on the basis of document SCCR/15/2 as the document on which to take a decision for convening a diplomatic conference. If a different approach were adopted, such as that suggested by the Chair in his guidelines and instructions for a draft basic proposal, the Delegation could consider it, but would have procedural difficulties as no decision on that approach could be taken by the Delegation before having an opportunity in a formal SCCR meeting to consider the text of the new draft basic proposal, and time to obtain instructions from its capital, and revise those instructions to reflect agreement among Members.

104. The Chair stated that some points remained to be drafted, and the guidelines required another meeting in order to allow States to have control and review the draft text. For that reason, it worked against the goals of the Committee. The Chair noted that the question posed by the Delegation of Indonesia had been answered by several other interventions, including the statement made by the Delegation of Brazil.

105. The Delegation of Morocco noted that the Committee's work required flexibility and cooperation in order to achieve a solution. It attached the highest importance to convening a Diplomatic Conference in 2007. There were deep differences between States, and many delegations needed to review their concerns in the new draft basic proposal in order to be able to support the convening of a diplomatic conference. However, a recommendation could be made to the General Assembly to convene a diplomatic conference around May to July 2007, on the condition that a consensus could be reached on a new draft basic proposal at an extra session of the SCCR, possibly in January 2007, to address all concerns.

106. The Chair reiterated two suggested alternatives: either the two-step approach to make the draft text more acceptable to Members or, alternately, the one-step approach of using the current text in document SCCR/15/2 as the draft basic proposal for the diplomatic conference.

107. The Delegation of the European Community and its Member States and the acceding States of Bulgaria and Romania noted that consultations had revealed that elements of the future treaty were to be found in document SCCR/15/2. The Chair's instructions and additional guidance on points for discussion on the basis of document SCCR/15/2 provided useful clarification for the main issues in that document, and it was possible to address those issues in a treaty. Following careful consideration of new elements, and deliberations based on wide consultation, it considered that the draft revised text in document SCCR/15/2 contained all the elements necessary to move towards a diplomatic conference in 2007. It was open to holding an additional meeting to clarify how to configure elements in the draft basic proposal, in conjunction with a meeting of the preparatory committee. A successful outcome depended upon good will, expertise and imagination, in order to reconfigure the draft basic proposal in a suitable way. Such reconfiguration would realign the importance of the elements of the text and, as those elements were interlinked, they could not be considered in isolation. The diplomatic conference would succeed with the help of an additional meeting to ensure all necessary elements were in place, and on that basis it could be held in 2007.

108. The Delegation of Pakistan supported the holding of a diplomatic conference. It asked whether there was a deadline for holding the Conference in 2007 regardless of whether there was consensus.

109. The Chair noted that a conclusion by the Standing Committee to recommend a diplomatic conference would preferably indicate a date, however, if it were not possible to reserve a venue then a recommendation could be made to hold the diplomatic conference at a time to be decided. The provision of a specific date would enable preparations to be made and to establish the preparatory committee. If, for example, the diplomatic conference were to be held in May, then a preparatory committee meeting could be held in December, alternately, if the diplomatic conference were to be held in July, then the preparatory committee meeting could be held in January. Everything in the text remained open until a clear consensus was reached on different points, and it was difficult to streamline that process.

110. The Delegation of the United States of America noted that it had not intervened earlier, but had listened to other delegations in order to test the degree of consensus and strength of the agreement of Members on the draft basic proposal in document SCCR/15/2. It had agreed that the proposal should exclude webcasting and new means of transmission so as to clear the air and gauge agreement among Members on the protection of traditional broadcasting organizations. The Delegation was of the view that document SCCR/15/2 of itself did not form the proper basis to go forward to a diplomatic conference. More certainty was required, whether by revision of the text or further instructions. The principle of inclusiveness had

benefits and costs, and there was less certainty of success in a diplomatic conference because areas of concern remained for many delegations. The Delegation had concerns with document SCCR/15/2, in particular the general principles in Articles 2, 3 and 4, which went beyond protection of broadcasting organizations and into difficult areas. It was also concerned with the uncertainty of the scope of technological protection measures, especially as the draft text contained no alternative provision based on the provisions on technological protection measures contained in the WPPT. The earlier proposal from the Delegation had not been included in the draft instructions for discussion. It was open to assist in alleviating uncertainty with respect to all provisions, and to work on instructions such as those the Chair had drafted, or to join in a separate meeting to consider all provisions. It was very important to obtain the right type and level of protection for broadcasting organizations. The Chair's document had put forward different possibilities to alleviate Members' concerns on limitations and exceptions and other general principles in document SCCR/15/2, and the Delegation welcomed it as a means to engage delegations to find middle ground to reduce uncertainty and proceed to a diplomatic conference. Further work was needed on document SCCR/15/2, and the Delegation was open to ideas on procedures to complete the work in a timely manner and approach the diplomatic conference on a better footing.

111. The Delegation of Australia had given careful consideration to the discussions, and was inclined to support the statements made by the Delegations of Norway and Switzerland, that the Draft Basic Proposal set out in document SCCR/15/2 as it stood could serve as the basic proposal for a diplomatic conference. The Delegation did not endorse all elements in document SCCR/15/2, but noted that inconsistencies in that text, as had been noted by other delegations, were inevitable in any document where all alternatives were included. While there were concerns with some provisions as noted by the Delegation of the United States of America, there were alternatives to consider. It was necessary to keep the work timely. The Delegation was not opposed to the two-step approach of holding a further meeting to refine the draft basic proposal, if that were the prevailing view of the Committee and the Chair.

112. The Delegation of Bolivia stated that it was premature to recommend the convening of a diplomatic conference. There were insufficient safeguards to protect the public interest, as noted by the Delegation of Uruguay. Reference to the public interest should appear in the body of the treaty, and not only in the provisions on exceptions and limitations. Work should continue in the SCCR to bring divergent views together, and to consider alternate text for a treaty in the following year.

113. The Chair noted that, following eight years of work in the SCCR, there was a strong feeling towards concluding the project successfully. While there was still divergence on substance, there was a great willingness to accept ways forward. There was a strong view among Members that the simplest approach, technically speaking, would be to state that the Revised Draft Basic Proposal should become the basic proposal for a diplomatic conference. There was also concern among Members that further work was needed, however the "instruction method" approach could be self-defeating as there was limited time to reflect the complex interrelationship between the various elements of the text, and what design would work. Reference had been made to holding another meeting, prior to the diplomatic conference, at which substantive issues could be discussed, on the condition that a decision had been taken to authorize a diplomatic conference. One approach was to make revisions to the document to present to a meeting to be held in conjunction with the preparatory committee meeting, but that could create uncertainty as the instructions were vague and there was no clear way to resolve conflicts. Another approach was to take a decision on the basis of converting the Draft Basic Proposal into a basic proposal and recommend to the General

Assembly the convening of a diplomatic conference, and the convening of another meeting in conjunction with that of the preparatory committee in order to find common ground. There was an understanding that the Draft Basic Proposal would not become the basic proposal without further work, but the formal decision would be that the basic proposal was in existence. Work could be done on a parallel document of the basic proposal in connection with the preparatory meeting, and it could be seen whether some contentious issues on the indicative list could be resolved and differences narrowed, so that other elements of consensus could emerge. From that preparatory meeting could be derived elements that enjoyed broad support or consensus that could be put before the diplomatic conference as a proposal, or included in a working paper developed prior to the diplomatic conference. A number of delegations, or coalition of delegations, were willing to propose such a document to the diplomatic conference. Those were then two possibilities for moving forward; drafting a *de facto* official working document, or delegations could make their own proposals. The discussions to date had indicated different areas of concern, and also clear indications of what was acceptable. Following consultations with the Secretariat, the Chair suggested the following Recommendation:

“The Diplomatic Conference on the Protection of the Rights of Broadcasting Organizations will be convened from July 11 to August 1, 2007, in Geneva. The objective of the Diplomatic Conference would be to negotiate and conclude a WIPO Treaty on the Protection of Broadcasting Organizations including cablecasting organizations. The scope of the Treaty would be confined to the protection of broadcasting and cablecasting organizations in the traditional sense.

“The revised Draft Basic Proposal SCCR/15/2 would constitute the basic proposal.

“The meeting of the Preparatory Committee would be convened in January 2007 to prepare the necessary modalities of the Diplomatic Conference. The Preparatory Committee would consider the draft rules of procedure to be presented for adoption by the Diplomatic Conference, the list of States as well as international intergovernmental organizations (IGOs) and non-governmental organizations (NGOs) to be invited to participate in the Conference, as well as other organizational matters.

“A special two-day meeting would be convened in conjunction with the meeting of the Preparatory Committee to clarify outstanding issues. Prior to that special meeting, a non-paper would be prepared by the Chair to facilitate considerations at the meeting, and made available to delegations and observers by December 15, 2006.”

The Chair sought the Standing Committee’s approval of the outlined proposal.

114. The Delegation of India indicated that the three first points of the Draft Conclusions prepared by the Chair would not raise any observation. However, further clarification was required on the status of the Draft Conclusions of the Chair as well as on the basis of preparing that document. There was need for clarification to ensure that the decision made at the fourteenth session of the SCCR that the present session should examine the Revised Draft Basic Proposal article by article would be respected. The procedure followed at the present session had been different from what was anticipated. It was interested in knowing which procedure would be followed for the consideration of the issues raised in the Draft Conclusions, including the nature and impact of the results of such consideration on the Revised Draft Basic Proposal.

115. The Chair stated that the proposed two-day meeting could be called a special meeting. The objective would consist in looking at the substantive issues indicated in the Draft Conclusions under “Instructions for the Preparation of the Basic Proposal”, in order to try to resolve whenever possible, any diverging views on those issues for the sake of reaching consensus, or near-to-consensus, positions that would be reflected as an outcome of that meeting. That meeting could make it possible to narrow the discrepancies at the diplomatic conference. If some items could be resolved completely between delegations at that informal meeting, *de facto* it would improve the possibilities of bringing about solutions at the diplomatic conference. The special meeting would therefore follow the procedural setting that the present session could not follow. The special meeting would examine the items indicated in the Draft Conclusions, article-by article, provision-by-provision. The document that would come out of such a meeting would be considered as a non-paper. Considerations that could be adopted as a positive outcome of that meeting could be conveyed to the diplomatic conference, depending on the decision of the participating delegations. Another possibility would be to simply consider the status of the conclusions of that meeting as a non-paper even if amendments would be accepted and common ground found.

116. The Delegation of India noted that the substantive issues indicated under “Instructions for the Preparation of the Basic Proposal” that could be considered in the non-paper indicated by the Chair, covered all substantive issues of the Revised Draft Basic Proposal. It proposed to proceed otherwise in leaving it to the Member States to decide on those substantive issues in order to avoid having another draft document in addition to the Revised Draft Basic Proposal (document SCCR/15/2) that might create confusion. The process could perhaps be taken forward if an agreement was made on those substantive issues

117. The Chair suggested restricting the substantive issues to those headings in the instructions which were written in italics. The approach of the non-paper could facilitate the work of the special meeting as well as establishing common ground between the delegations. The list provided for in the Draft Conclusion was open and has been made following the reports of previous meetings and on the basis of the fact that that list clearly reflected areas where different opinions had been manifested. He noted that the Delegation of India could add or delete some items on the list, though one could not expect that the meeting could be more than a prelude to the diplomatic conference, as it would aim at resolving some issues in the midway to it.

118. The Delegation of India stated that in light of the clarification of the Chair, the substantive issues that should be considered at the special meeting, according to the Draft Conclusions, would be practically the whole treaty and not some specific substantive issues. Therefore the Standing Committee should either discard the Revised Draft Basic Proposal or prepare a new document that would remove all the contradictions and inconsistencies. That document should be considered by another round of discussions in the two-day meeting proposed by the Chair, which the Delegation supported. On the other hand, converting document SCCR/15/2 into a basic proposal for the diplomatic conference in addition to another parallel set of documents would not resolve the contradictions and the inconsistencies and would not be a good process. The Draft Basic Proposal had gathered the consent of a majority of delegations and there was no need for having further documents to be prepared for ironing out substantive issues. It could not be both ways: to accept that all-substantive issues be discussed in the diplomatic conference and at the same time super-impose another document that would undermine the legality and the utility of the Draft Basic Proposal.

119. The Chair noted that in view of the analysis of the Delegation of India, two possibilities existed. First, to accept the preparation of a non-paper to be considered by the special meeting; in that case, a decision should be taken that the Revised Draft Basic Proposal would be the basic proposal for the diplomatic conference. Second, if no consensus could be reached, it would be better to propose a non-paper so delegations could discard it immediately if nothing would emerge from it. However, if a consensus could emerge from the special meeting on the basis of a non-paper, it would have, *de facto*, a powerful and useful function at the diplomatic conference to overcome the contradictions and inconsistencies. That was why a non-paper proposal had been included in the Draft Conclusions. Another possibility, subject to the agreement of all delegations, would be to use the Draft Basic Proposal as the subject matter for consideration at the special meeting. Two scenarios might be envisaged: the basic proposal could make a consensus, or another consensus that would be different from the basic proposal could emerge to be conveyed to the diplomatic conference; both scenarios would be ideal solutions.

120. The Delegation of India thanked the Chair for those clarifications and proposals and stated that it would reserve the right to come back to make further observations for clarification.

121. The Delegation of Brazil noted that the explanations given by the Chair did not bring total clarity, in particular his last two proposals. Convening a diplomatic conference on the basis of document SCCR/15/2 would mean that formally that document would be the basic proposal. Non-papers might be produced, but they would have no formal relevance in the process. The authorities of its country could then only take document SCCR/15/2 as the basic proposal in view of the fact that WIPO, in many respects, was very legalistic. A basic proposal had to be identified in order that a diplomatic conference could be convened, and the Delegation could not inform its authorities that the basis for the conference would be a non-paper that it knew nothing about. It supported India on the issue of preparing additional non-papers or documents that could be super-imposed on the current one. The proposal put forth by the Chair would not lower the margin of risks that other delegates have referred to in previous interventions. Furthermore, proposals that did not provide Members of the SCCR with additional certainty raised concerns. First, in the general remarks of the Draft Conclusions it was not clear that the protection for the signals was a protection against signal theft and not a protection of signals with a lot of exclusive rights. Second, the issue of regrouping provisions on general principles should be under a heading regarding general principles. It was opposed to including those general principles in the preamble and wished to see the restoration of the inclusive approach that document SCCR/15/2 had taken regarding general principles. It supported the statement made by the Delegation of the European Community to consider the provisions of the treaty as interlinked and not susceptible of being singled out or isolated, and expressed its position that the draft provisions of document SCCR/15/2 regarding General Principles should remain. The Draft Conclusions prepared by the Chair did not have any reference to the beneficiaries of the treaty and thereby reflected the general agreement to restrict the protection to broadcasting and cablecasting organizations. With regards to definitions the Delegation stated that the proposal of the Chair to refine those definitions concerning the concepts of broadcast and signals was a positive contribution. The rights granted should not be based on a broad approach and on exclusive rights of retransmission. Rights on contents and on contents in the public domain should be clearly excluded from the treaty. All post-fixation rights should be left out of the treaty if it were based on broad exclusive rights and a broad retransmission protection. Those concerns had not been taken into account by the Chair in preparing his Draft Conclusions. National treatment should be the main principle and not reciprocity. Regarding the issue of limitations

and exceptions the Delegation would be in favor of a non-exhaustive list approach as many other countries had stressed. TPMs were a critical element but they had not yet been removed. It had been emphasized that they were relevant for protecting content protected under copyright against piracy, through other existing international agreements and national laws, but there was no need for having TPMs associated with the treaty if it only would deal with the protection of signals against signal theft. Concerning the subject matter of eligibility, the term “unconditional” used by the Chair was not an exact term to use, as there had always been a condition to become party to the treaty. The report should reflect those concerns in order that they might be used in the preparation of the non-paper proposed by the Chair.

122. The Chair stated that there would be a basic proposal for the proposed special meeting (document SCCR/15/2) and there would not be any non-paper. The basis for discussion in that special meeting should only be the basic proposal, and henceforth the idea of having a non-paper should be discarded, as there was no consensus on that subject matter. He urged the delegations to delete from the initial Draft Conclusions any mention of that issue. Any special meeting would only aim at clarifying outstanding issues.

123. The Delegation of Iran (Islamic Republic of) requested further clarification regarding the status of document SCCR/15/2 as the basic draft proposal for the diplomatic conference as well as the proposal of the Chair concerning submitting a non-paper to a special meeting.

124. The Chair explained that the idea of a non-paper was already rejected and did not exist anymore. He further stated that many delegations at the session seemed to be able to consider that document SCCR/15/2 could constitute the basic proposal and be the basis for consideration at the special meeting, and he urged the SCCR to express itself on that issue.

125. The Delegation of El Salvador stated that it had listened with great attention to the developments of the final stage of the session and expressed its belief that convening a diplomatic conference on the basis of the Draft Basic Proposal would be possible. Technical issues that had not been resolved and that had been expressed by many delegations, including itself, could be resolved at the conference. However, some doubts still existed as to the proposal by the Chair on holding a two-day meeting. Further clarification was requested in order to create certainty about when a diplomatic conference could be convened, under which authority, and whether a two-day meeting would be called before a diplomatic conference.

126. The Chair stated that there would be a clear recommendation that a diplomatic conference be convened; the dates would be those that he has just indicated, i.e. July 11 to August 1, 2007. In order to accommodate the position that had been put by at least one delegation regarding the conversion of the Revised Draft Basic Proposal to the basic proposal for the diplomatic conference, the Chair suggested that point 2 of the proposed Recommendation to the General Assembly of WIPO be worded: “The Revised Draft Basic Proposal (document SCCR/15/2 Rev.) will constitute the basic proposal with the understanding that all delegations may make proposals at the diplomatic conference.” The Chair asked the delegations to refrain from asking for the floor because he would proceed to the end of the meeting after the intervention of India.

127. The Delegation of India expressed its concerns about and requested clarification of, paragraph 4 on page 1 of the Draft Conclusions prepared by the Chair.

128. The Chair clarified that in the new proposed Recommendation and in order to make consensus easier, that part of the initial Draft Conclusions would no longer exist; the same treatment would apply to the "Instructions for the Preparations of the Basic Proposal" that would also be deleted.

129. The Delegation of India stated that the wording of the fourth paragraph of the introductory remarks or preamble of the initial Draft Conclusions of the SCCR and the proposal by the Chair for a two-day meeting to discuss the draft basic proposal and resolve substantive issues clearly indicated that there had been no broad consensus.

130. The Chair advised the Delegation of India that he had omitted to indicate that all the elements that he did not read out should be considered as not being part of the conclusions. The removal of these initial introductory remarks, that reflected the broad consensus, did not mean that the issues raised by the Delegation of India were not valid. The Chair asked whether the Recommendation as amended could be approved. The understanding was that there would be no reference to non-papers at the end of point 4 and that the information meeting would be organized with no separate working documents; that meeting would itself consider the way it would express its work either in papers, non-papers or without papers. The Chair asked if the Committee could approve the Recommendation after these clarifications.

131. The Delegation of Argentina stated that the work of the SCCR has been completed in the most flexible manner. In the same way and as a matter of foremost importance, the Recommendation, as amended by the Chair, should be distributed to the delegations in writing and in all languages. The formulation of that text and how it had been formulated would indicate whether the SCCR had fulfilled the mandate given by the General Assembly; the SCCR had not been asked to fix the date for a diplomatic conference as its mandate had been carefully negotiated to be to prepare a draft that would allow for the convening of diplomatic conference. No decision of the SCCR should contravene the decision of the General Assembly; in that respect a written decision should be distributed in writing in order to enable the Delegation to make an informed decision.

132. The Chair assured that for technical reasons, it would not be possible to provide translated and printed copies of the Recommendation. The conclusions would read as follow subject to the approval of the delegations:

"1. A Diplomatic Conference on the Protection of the Rights of Broadcasting Organizations will be convened from July 11 to August 1, 2007, in Geneva. The objective of this Conference is to negotiate and conclude a WIPO treaty on the protection of broadcasting organizations, including cablecasting organizations. The scope of the treaty will be confined to the protection of broadcasting and cablecasting organizations in the traditional sense.

"2. The Revised Basic Proposal (document SCCR/15/2 Rev.) will constitute the Basic Proposal with the understanding that all Member States may make proposals at the Diplomatic Conference.

“3. The meeting of a preparatory committee will be convened for January 2007 to prepare the necessary modalities of the Diplomatic Conference. The preparatory committee will consider the draft rules of procedure to be presented for adoption to the Diplomatic Conference, the lists of States, as well as intergovernmental and non-governmental organizations to be invited to participate in the conference, as well as other necessary organizational matters.

“4. A special meeting of two days to clarify the outstanding issues will be convened in conjunction with the meeting of the preparatory committee.

“5. The WIPO Secretariat will organize, in cooperation with the Member States concerned, and at the request of Member States, consultations and information meetings on the matters of the Diplomatic Conference. The meetings will be hosted by the inviting Member States.”

133. The Delegation of India asked how silence could be taken as consent in an international organization. Additionally, it had asked whether the mandate of the SCCR included the recommendation of the dates for the diplomatic conference, or whether that decision rested with the General Assembly. If it was the mandate of the SCCR, a recommendation could be made as requested by the Delegation of Argentina. However, the Delegation of India understood that the fixing of the dates of the diplomatic conference fell under the competence of the General Assembly and not the SCCR, and as such, they wished their reservation to be noted on that issue.

134. The Chair stated that the reservation had been recorded and endorsed that it was under the powers and only within the powers of the General Assembly to fix the dates of the diplomatic conference. However, the General Assembly should be informed and advised about the outcome of the SCCR session in order to fix other dates, or maintain those indicated in the Recommendation. Silence meant consent, and that meant that no intervention was needed to endorse the Recommendation by taking the floor to express support. Noting that nobody asked for the floor, the Chair declared the Recommendation adopted. He thanked and congratulated all delegations for being able work together so intensively in the consultations in order to reach that final proposal.

OTHER MATTERS

135. The Chair noted that no Delegations asked for the floor.

CLOSING OF THE SESSION

136. The Chair declared the session closed.

[Annexes follow]

ANNEXE I/ANNEX I

WORLD INTELLECTUAL PROPERTY ORGANIZATION

SCCR Fifteenth Session
Geneva, September 11 to 13, 2006

DRAFT CONCLUSIONS OF THE SCCR

prepared by the Chair

According to the decision of the WIPO General Assembly at its session from September 26 to October 5, 2005, the Standing Committee on Copyright and Related Rights (SCCR), has convened in one meeting to accelerate discussions on the second revised Consolidated Text (SCCR/12/2 rev. 2) and on the Working Paper (SCCR/12/5 Prov.), and in two meetings in order to agree and finalize a basic proposal for a treaty on the protection of the rights of broadcasting organizations.

The first draft basic proposal for the treaty (SCCR/14/2) was considered in the fourteenth session of the SCCR. In order to agree and finalize the basic proposal a revised draft basic proposal (SCCR/15/2) was prepared and considered in the fifteenth session of the SCCR, September 11 to 13, 2006.

The revised draft basic proposal, according to the conclusions by the SCCR in its May meeting, was focused on the protection of broadcasting and cablecasting organizations' rights in the traditional sense. The issue on the protection of webcasting and simulcasting will be considered separately, on the basis of a document to be prepared later.

The SCCR observed that the preparatory work on the rights of the traditional broadcasting and cablecasting organizations is well advanced, and there was broad consensus in the SCCR that the work may now be concluded by bringing the matter for final negotiation into a diplomatic conference. The SCCR stated that there was sufficient common ground on substantive questions in order to transmit a proposal to the General Assembly of the WIPO in 2006 to recommend the convening of a diplomatic conference.

Recommendation on the diplomatic conference

A diplomatic conference on the protection of broadcasting organizations be convened on May/July xx to xx, 2007, in Geneva. The objective of this diplomatic conference is to negotiate and conclude a WIPO treaty on the protection of broadcasting organizations, including cablecasting organizations. The scope of the treaty will be confined on the protection of broadcasting and cablecasting organizations in the traditional sense.

Conclusions on the preparatory steps

Basic proposal

A basic proposal for the diplomatic conference will be prepared on the basis of the revised draft basic proposal and the discussions in the September meeting of the SCCR, as well as the drafting instructions below, adopted by the SCCR. The basic proposal shall be distributed to the Member States of the WIPO, the European Community, as well as to the observer organizations by February 28, 2007.

Preparatory committee

The meeting of a preparatory committee will be convened for mid December 2006, to prepare the necessary modalities of the diplomatic conference. The preparatory committee considers the draft rules of procedure to be presented for adoption to the diplomatic conference, the lists of states, as well as intergovernmental and non-governmental organizations to be invited to participate in the conference, as well as other necessary organizational matters.

Consultation and information meetings

The Secretariat of the WIPO will organize, in co-operation with the Member States concerned, and at the request by the Member States, consultations and information meetings on the matters of the diplomatic conference. The meetings will be hosted by the inviting Member State.

Instructions for the preparation of the Basic Proposal

The following is provided in order to allow consideration of whether the items should be retained, reformulated or deleted.

General

- The basic proposal will be designed to clearly indicate the nature, the focus and the scope of the instrument, i.e. the treaty will provide protection for the signals of the broadcasting and cablecasting organizations without affecting or addressing the rights on content carried by the signal.

Preamble

- A revised preamble will be prepared in order to clarify the objectives of the treaty. Explanatory notes shall further amplify these issues.
- Regrouping of provisions on certain general principles in the Preamble.

Definitions

- definition of “signal” will be added
- concept of “broadcast” will be explained or defined

Scope

- provisions on the scope will be refined (signal, broadcast)

Rights and protection

- a broad-based exclusive right of retransmission
- exclusive right of (the initial) fixation
- post-fixation rights

National treatment

- the main principle
- in areas where different levels of protection are allowed, possibility for reciprocity

Limitations and exceptions

- the WPPT type of provisions on limitations and exceptions
- list approach

Technological measures

- as in the revised draft basic proposal
- certain conditions

Term of protection

- 20 years

Eligibility

- unconditional, open for all Member States of the WIPO, as well as for intergovernmental organizations

[Annex II follows]

ANNEXE II/ANNEX II

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

I. MEMBRES/MEMBERS

(dans l'ordre alphabétique des noms français des États/
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Myrna HUGGINS (Ms.), First Secretary, Permanent Mission, Geneva

TURQUIE/TURKEY

Tahsin YILMAZ, Deputy General Manager, Ministry of Culture, Ankara

Yesim BAYKAL (Ms.), Legal Advisor, Foreign Affairs, Permanent Mission, Geneva

URUGUAY

Alfredo José SCAFATI, Presidente, Consejo de Derechos de Autor, Ministerio de Educación y Cultura, Montevideo

VENEZUELA

Sorely SOTO CARPIO (Sra.), Directora General(e), Dirección Nacional de Derecho de Autor, Dirección General Servicio Autonomo de la Propiedad Intelectual (SAPI), Ministerio de Justicia, Caracas

VIET NAM

Hong Nga PHAM, Counsellor, Permanent Mission, Geneva

II. AUTRES MEMBRES/
NON-STATE MEMBERS

COMMUNAUTÉ EUROPÉENNE (CE)*/EUROPEAN COMMUNITY (EC)*

Tilman LÜDER, Head, Copyright Division, European Commission, Brussels

Julie SAMNADDA (Ms.), Legal Policy Advisor, European Commission, Brussels

Sergio BALIBREA, Counsellor, Permanent Delegation, Geneva

III. ORGANISATIONS INTERGOUVERNEMENTALES/
INTERGOVERNMENTAL ORGANIZATIONS

DÉLÉGATION PERMANENTE DE L'UNION AFRICAINE À GENÈVE/PERMANENT
DELEGATION OF THE AFRICAN UNION IN GENEVA

Georges-Rémi NAMEKONG, Counsellor, Geneva

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

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

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

Kerstin HOLST (Ms.), Liaison Officer, Liaison Office, Geneva

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

Hannu WAGER, Counsellor, Geneva

EUROPEAN BUREAU OF LIBRARY, INFORMATION AND DOCUMENTATION ASSOCIATIONS

Andrew CRANFIELD, Director, The Hague

ORGANISATION INTERNATIONALE DE LA FRANCOPHONIE (OIF)

Sandra COULIBALY LEROY (Mme), représentant permanent adjoint, Genève

UNION DES RADIODIFFUSIONS DES ÉTATS ARABES (ASBU)/ARAB BROADCASTING UNION (ASBU)

Lyes BELARIBI, directeur, Centre d'échanges, Alger

SOUTH CENTRE

Sisule F. MUSUNGU, Programme Coordinator, Innovation, Access to Knowledge and Intellectual Property Programme, Geneva

Ermias Tereste BIADGLENG, Programme Officer, Innovation Access to Knowledge and Intellectual Property Programme, Geneva

Viviana MUNOZ (Ms.), Programme Officer, Innovation, Access to Knowledge and Intellectual Property Programme, Geneva

THIRD WORLD NETWORK (TWN)

Sangeeta SHASHIKANT (Ms.), Researcher, Geneva

IV. ORGANISATIONS NON GOUVERNEMENTALES/
NON-GOVERNMENTAL ORGANIZATIONS

Alfa-Redi: Pedro CANUT ZAZURCA (Counsellor, Lima)

Alliance pour les droits des créateurs (ADC)/Creators' Rights Alliance (CRA):
Michel BEAUCHEMIN (Co-Chair/coprésidente, Toronto)

Association allemande pour la propriété industrielle et le droit d'auteur (GRUR)/German Association for the Protection of Industrial Property and Copyright Law (GRUR):
Sandra VON LINGEN (Ms.) (Legal Co-ordinator/International Contracts, Deutsch
Vereinigung für Gewerblichen Rechtsschutz und Urheberrecht e.V., Cologne);
Hans-Peter HILLIG (Lawyer and Member, Special Committee for Copyright and Publishing
Law, Frechen)

Association brésilienne des émetteurs de radio et de télévision (ABERT): Alexandre JOBIM
(Legal Counsel, Brasilia); Isabella SANTORO (Ms.) (Member, Juridico, Brasilia)

Association de l'industrie de l'informatique et de la communication (CCIA)/Computer and Communications Industry Association (CCIA): Matthew SCHRUERS (Senior Counsel for
Litigation and Legislative Affairs, Washington, D.C.)

Association des organisations européennes d'artistes interprètes (AEPO-ARTIS)/Association of European Performers' Organisations (AEPO-ARTIS): Guenaëlle COLLET (Ms.) (Head, AEPO-ARTIS Office, Brussels)

Association des télévisions commerciales européennes (ACT)/Association of Commercial Television in Europe (ACT): Tom Rivers (Legal Advisor, London)

Association européenne des étudiants en droit (ELSA international)/European Law Students' Association (ELSA International): Gintare BRAMBAITE (Member, Belgium);
Leonor Agüera JAQUEMET (Secretary, Spain); Alexander STEFANOV (Vice President
Marketing, Bulgaria)

Association européenne des médias numériques (EdiMA)/European Digital Media Association (EDiMA): Lucy C. CRONIN (Ms.), Executive Director, London

Association internationale de radiodiffusion (AIR)/International Association of Broadcasting (IAB): Alexandre JOBIM (Presidente del Comité Jurídico Permanente y Presidente

(Interino) del Comité Permanente de Derecho de Autor, Montevideo); Daniel PIMENTEL (Vicepresidente Regional para América del Sur de la AIR, Montevideo); Edmundo RÉBORA, Miembro del Comité de Derecho de Autor, Montevideo)

Association littéraire et artistique internationale (ALAI)/International Literary and Artistic Association (ALAI): Victor NABHAN (President, Ferney-Voltaire); Silke VON LEWINSKI (Ms.) (Head, International Law Department, Munich)

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

Centre d'administration des droits des artistes interprètes ou exécutants (CPR) du GEIDANKYO/Centre for Performers' Rights Administrations (CPRA) of GEIDANKYO: Yoshiji NAKAMURA (Vice Chairman, Executive Committee of the Performers' Rights Administration (CPRA), Tokyo); Samuel Shu MASUYAMA (Director, Legal and Research Department, Committee of the Performers' Rights Administration (CPRA), Tokyo)

Centre d'échange et de coopération pour l'Amérique latine (CECAL)/ Exchange and Cooperation Centre for Latin America (ECCLA): Clémence GAUCHERAND, Geneva

Centre de recherche et d'information sur le droit d'auteur (CRIC)/Copyright Research and Information Center (CRIC): Shin-ichi UEHARA (Co-Director, General Affairs, Asahi Broadcasting Corporation, Tokyo); Atsushi YAMAMOTO (General Manager, Planning and Research Department, Digital Content Association of Japan (DCAJ), Tokyo)

Center for International Environmental Law (CIEL): Dalindybo Bafana SHABALALA (Director, Intellectual Property and Sustainable Development Project, Geneva)

Centre international pour le commerce et le développement durable (ICTSD)/International Center for Trade and Sustainable Development (ICTSD): Preeti RAMDASI (Ms.) (Assistant, Intellectual Property Rights, Geneva)

Chambre de commerce internationale (CCI)/International Chamber of Commerce (ICC): David FARES (Vice-President, E-Commerce Policy, News Corporation, New York)

Civil Society Coalition (CSC): James LOVE (Director, Washington, D.C.); Manon RESS (Ms.) (Director, Information Society Projects); Thiru BALASUBRAMANIAM (Geneva Representative)

Comité "acteurs, interprètes" (CSAI)/ Actors, Interpreting Artists Committee (CSAI): José María MONTES, Madrid)

Consumers International (CI): Michelle CHILDS (Ms.) (London)

Centre de recherche et d'information sur le droit d'auteur (CRIC)/Copyright Research and Information Center (CRIC): Shin-ichi UEHARA (Co-Director, General Affairs, Asahi Broadcasting Corporation, Tokyo); Atsushi YAMAMOTO (General Manager, Planning and Research Department, Digital Content Association of Japan (DCAJ), Tokyo)

Digital Media Association (DiMA): Lee KNIFE (General Counsel, Washington, D.C.)

Electronic Frontier Foundation (EFF): Gwen HINZE (Ms.) (International Affairs Director, San Francisco, CA)

European Bureau of Library, Information and Documentation Associations (EBLIDA): Andrew CRANFIELD, Director, The Hague

European Digital Rights (EDRi): Ville OKSANEN (Co-Chair EDRI IPR-Working Group, Helsinki)

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

Fédération ibéro-latino-américaine des artistes interprètes ou exécutants (FILAIÉ)/Ibero-Latin-American Federation of Performers (FILAIÉ): Luis COBOS PAVON (Presidente, Artistas Intérpretes Intérpretes o Ejecutantes (AIE), Madrid); Miguel PÉREZ SOLIS (Asesor Jurídico, Madrid)

Fédération internationale de la vidéo/International Video Federation (IVF): Theodore Michael SHAPIRO (Legal Advisor, Brussels); Bradley SILVER (Legal Advisor, Brussels)

Fédération internationale de l'industrie phonographique (IFPI)/International Federation of the Phonographic Industry (IFPI): Neil TURKEWITZ (Executive Vice President International, Washington D.C.); Ute DECKER (Ms.) (Deputy Director, Global Legal Policy, London)
Fédération internationale des acteurs (FIA)/International Federation of Actors (FIA): Dominick LUQUER (General Secretary, London)

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

Fédération internationale des associations des bibliothécaires et des bibliothèques (FIAB)/International Federation of Library Associations and Institutions (IFLA): Harald V. HIELMCRONE (Research and Special Collections, StatsBiblioteket, Universitetsparken, Aarhus)

Fédération internationale des associations de producteurs de films (FIAPF)/International Federation of Film Producers Associations (FIAPF): Valérie LÉPINE-KARNIK (Mme) (directrice générale, Paris); Scott MARTIN (Member, Paris)

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

Groupement international des artistes interprètes ou exécutants (GIART)/ International Organization of Performing Artists (GIART): François PARROT (secrétaire général, Saint-Lambert)

Independent Film and Television Alliance (IFTA): Lawrence SAFIR (Vice President - European Affairs, Los Angeles)

Institut Max-Planck pour la propriété intellectuelle, le droit de compétition et de fiscalité (MPI)/Max-Planck-Institute for Intellectual Property, Competition and Tax Law (MPI): Silke VON LEWINSKI (Ms.) (Head of Unit, Munich)

International Music Managers Forum (IMMF): David STOPPS (Head, Copyright, London); Gill BAXTER (Ms.) (Legal Advisor, London); Nick ASHTON-HART (Advisor, London)

IP Justice: Robin D. GROSS (Executive Director, San Francisco, United States of America)

National Association of Broadcasters (NAB): Benjamin F. P. IVINS (Senior Associate General Counsel, Washington, D.C.); Jane MAGO (Ms.) (General Counsel, Legal Department, Washington, D.C.)

North American Broadcasters Association (NABA): Erica REDLER (Ms.) (Chair, NABA Legal Committee, General Counsel, Canadian Association of Broadcasters); Miguel GUTIÉRREZ CERVANTES (Legal Director, Intellectual Property Rights, Grupo Televisa, México); Alejandra NAVARRO GALLO (Sra.) (Intellectual Property Attorney, Zug)

National Association of Commercial Broadcasters in Japan (NAB-Japan): Hidetoshi KATO (Copyright Department, Programming Division, TV Tokyo); Seijiro YANAGIDA

(Deputy Manager, Copyright Administration, Rights and Contracts Management, Compliance and Standards, Nippon Television Network Corp. (NTV), Tokyo); Yoshino TANAKA (Patent Attorney, Copyright Department, Fuji Television Network Corporation, Tokyo); Hisashi IKEDA (Deputy Director, Digital Broadcast Promotion Division, National Association of Commercial Broadcasters in Japan (NAB-Japan), Tokyo); Reiko BLAUENSTEIN-MATSUBA (Consultant Interpreter, Geneva); Yuko MATUOKA (Consultant Interpreter); Maya KUSANO (Ms.) (Interpreter, Tokyo)

Public Knowledge: Jeffrey LAWRENCE (Representative, Washington, D.C.)

Sociedade Portuguesa de Autores(SPA)/Société portugaise d'auteurs (SPA):
Manuel FREIRE (President et Chief Executive Officer, Lisbonne)

Union de radiodiffusion Asie-Pacifique (ABU)/Asia-Pacific Broadcasting Union (ABU):
Fernand ALBERTO (Legal Counsel, ABU, Quezon City); Tina LEE (Ms.) (General Counsel, Television Broadcasts Ltd. (TVB) Hong Kong and Vice-Chairperson, ABU); Shun HASHIYA (Copyright Center, Multimedia Development Department, Nippon Hoso Kyokai (NHK) Tokyo); Moses KAKAIRE (Manager, Legal and Regulatory Commercial Radio Australia (CRA), Surry Hills); Tureia CORR (Ms.) (Senior Lawyer, Special Broadcasting Service Corporation (SBS), Artarmon, Australia); David Jin-Hoon CHOI (Copyright and Legal Affairs Division, Munhwa Broadcasting Corporation, Seoul)

Union européenne de radio-télévision (UER)/European Broadcasting Union (EBU):
Werner RUMPHORTS (Director, Legal Department, Geneva); Moira BURNETT (Ms.) (Legal Advisor, Legal Department, Geneva); Heijo RUIJSENAARS (Legal Advisor, Legal Department, Geneva)

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

Union internationale des éditeurs (UIE)/International Publishers Association (IPA):
Antje SORENSEN (Ms.) (Legal Counsel, Geneva); Magdalen VAN WYK (Ms.) (Geneva)

United States Telecom Association: Kevin G. RUPY (Director, Policy Development, USTelecom, Washington, D.C.); Sarah DEUTSCH (Ms.) (Vice President and Associate General Counsel, Verizon Communications, Washington, D.C.); Marilyn CADE (Ms.) (Advisor, Falls Church, VA)

V. BUREAU/OFFICERS

Président/Chair: Jukka LIEDES (Finlande/Finland)

Vice-présidents/
Vice-Chairs: Xiuling ZHAO (Ms.) (Chine/China)
Abdellah OUADRHIRI (Maroc/Morocco)

Secrétaire/Secretary: Jørgen BLOMQVIST (OMPI/WIPO)

VI. BUREAU INTERNATIONAL DE L'ORGANISATION MONDIALE DE LA
PROPRIÉTÉ INTELLECTUELLE (OMPI)/
INTERNATIONAL BUREAU OF THE WORLD INTELLECTUAL
PROPERTY ORGANIZATION (WIPO)

Rita HAYES (Mme/Ms.), vice-directeur général, Droit d'auteur et droits connexes et relations avec le monde de l'entreprise/Deputy Director General, Copyright and Related Rights and Industry Relations

Jørgen BLOMQVIST, directeur de la Division du droit d'auteur/Director, Copyright Law Division

Richard OWENS, directeur de la Division du commerce électronique, des techniques et de la gestion du droit d'auteur/Director, Copyright E-Commerce, Technology and Management Division

Boris KOKIN, conseiller juridique principal, Division du droit d'auteur/Senior Legal Counsellor, Copyright Law Division

Víctor VÁZQUEZ LÓPEZ, conseiller juridique principal, Division du commerce électronique, des techniques et de la gestion du droit d'auteur/Senior Legal Counsellor, Copyright E-Commerce, Technology and Management Division

Carole CROELLA (Mme/Ms.), conseillère, Division du droit d'auteur/Counsellor, Copyright Law Division

Lucinda LONGCROFT (Mme/Ms.), juriste principal, Division du commerce électronique, des techniques et de la gestion du droit d'auteur/Senior Legal Officer, Copyright E-Commerce, Technology and Management Division

Geidy LUNG (Mme/Ms.), juriste principal, Division du droit d'auteur/Senior Legal Officer, Copyright Law Division

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