

Standing Committee on Copyright and Related Rights

Twenty-First Session

Geneva, November 8 to 12, 2010

Report

adopted by the Committee

1. The Standing Committee on Copyright and Related Rights (hereinafter referred to as the “Standing Committee,” or the “SCCR”) held its twenty-first session in Geneva, from November 8 to 12, 2010.
2. The following Member States of the World Intellectual Property Organization (WIPO) and/or members of the Berne Union for the Protection of Literary and Artistic Works were represented in the meeting: Afghanistan, Algeria, Angola, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Bulgaria, Burkina Faso, Canada, Chile, China, Colombia, Cote d’Ivoire, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, France, Georgia, Germany, Ghana, Haiti, Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Kenya, Lao People’s Democratic Republic, Lebanon, Lithuania, Madagascar, Malawi, Malaysia, Malta, Mauritius, Mexico, Monaco, Morocco, Myanmar, Nepal, New Zealand, Nicaragua, Nigeria, Norway, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Senegal, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States of America, Uruguay, Venezuela, Yemen, Zambia, Zimbabwe (89).
3. The European Union (EU) participated in the meeting in a member capacity.
4. The following intergovernmental organizations took part in the meeting in an observer capacity: Arab Broadcasting Union (ASBU), South Centre, United Nations Educational, Scientific and Cultural Organization (UNESCO) and World Trade Organization (WTO) (4).
5. The following non-governmental organizations took part in the meeting as observers: Actors, Interpreting Artists Committee (CSAI), American Council of the Blind (ACB), Asia-Pacific Broadcasting Union (ABU), Association IQSensato (IQSensato), Association of Commercial Television in Europe (ACT), British Copyright Council (BCC), Centre for International Intellectual Property Studies (CEIPI), Centre for Internet and Society (CIS), Central and Eastern European Copyright Alliance (CEECA), Civil Society Coalition (CSC), *Comité national pour la promotion sociale des aveugles et amblyopes* (CNPSAA), Computer and Communications Industry Association (CCIA), Copyright Research Information Center (CRIC), *Corporación Innovarte*, *Discapacitados Visuales* IAP, Electronic Frontier Foundation (EFF), Electronic Information for Libraries (eIFL.net), European Broadcasting Union (EBU), Ibero-Latin-American Federation of Performers (FILAIE), International Association of Broadcasting (IAB), International Center for Trade and Sustainable Development (ICTSD), International Chamber of Commerce (ICC), International Council on Archives (ICA), International Federation of Actors (FIA), International Federation of Film Producers Associations (FIAPF), International Federation of Library Associations and Institutions (IFLA), International Federation of Musicians (FIM), International Federation of Reproduction Rights Organizations (IFRRO), International Federation of the Phonographic Industry (IFPI), International Group of Scientific, Technical and Medical Publishers (STM), International Literary and Artistic Association (ALAI), International Music Managers Forum (IMMF), International Publishers Association (IPA), International Video Federation (IVF), Istanbul Bilgi University Intellectual Property Law Research Center (BILFIM), Knowledge Ecology International, Inc. (KEI), Library Copyright Alliance (LCA), Max Planck Institute, National Association of Commercial Broadcasters in Japan (NAB-Japan), National Federation of the Blind (NFB), National Organization of Spanish Blind Persons (ONCE), North

American Broadcasters Association (NABA), *Organização Nacional de Cegos do Brasil* (ONCB), Royal National Institute of Blind People (RNIB), Third World Network (TWN), Transatlantic Consumer Dialogue (TACD), *Unión Latinoamericana de Ciegos* (ULAC), World Blind Union (WBU) (49).

OPENING OF THE SESSION

6. The Assistant Director General of WIPO, Culture and Creative Industries Sector, Mr. Trevor Clarke, welcomed delegates to the 21st session of the SCCR. He referred to the decision of the WIPO General Assembly regarding the work of the Committee. The Assembly accepted that there was no agreed set of conclusions at the 20th Session of the SCCR held in June 2010, and urged the Committee to continue its work regarding the substantive issues on the agenda and to improve efforts to advance the work of the SCCR in line with the General Assembly decision. It was important to capture the decisions reached during the substantive discussions in order to prepare the conclusions. He pledged the support of the Secretariat to assist the SCCR in its efforts towards a productive outcome. Once again, captioning services would be offered during the session of the SCCR in line with WIPO's commitment to improving accessibility. Finally, he informed the Committee that the Director General was attending a United Nations meeting in New York but he was due to return to Geneva later in the afternoon that day.
7. The Assistant Director General invited the elected Chair, Mr. Jukka Liedes of Finland, to preside over the meeting.

ADOPTION OF THE AGENDA OF THE TWENTY-FIRST SESSION

8. The Chair thanked the Assistant Director General for his opening remarks and expressed the hope that the Committee would achieve substantive progress in a foreseeable timeframe. He opened the session and introduced the draft agenda for the 21st session of the Committee.
9. The Committee adopted the draft agenda of the meeting.

ACCREDITATION OF NEW NON-GOVERNMENTAL ORGANIZATIONS

10. The Chair indicated that a request had been presented by Istanbul Bilgi University Intellectual Property Law Research Center BILFIM. The Committee approved the accreditation of that non-governmental organization.

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

11. The Committee approved the report of the 20th session of the SCCR. Technical corrections and amendment proposals to the draft report could be considered by the Secretariat until November 12, 2010.

General Statements

12. The Delegation of France, speaking on behalf of Group B, hoped that the 21st session of the SCCR would be productive. Group B would continue to support the conclusion of a treaty on the protection of audiovisual performances as an international legal instrument that would greatly contribute to cultural and economic development as well as promote cultural diversity. Group B also remained convinced of the need of a treaty to address the challenges of signal piracy encountered by broadcasting organizations, and was optimistic that a normative solution would be found rapidly. The special needs of persons with print disabilities had been already addressed by the national and regional legislations of countries of the Group. A careful examination of possible solutions in the Committee reinforced its conviction that a dual track approach, involving both the work of the WIPO Stakeholders' Platform and a potential international instrument, could produce concrete results. It commended the work done by the WIPO Stakeholders' Platform with the recent launching of its new TIGAR project, which would facilitate the delivery of published titles to trusted intermediaries. The two proposals on the table from Group B tackled the main obstacle to the access to protected works by people with print disabilities and the cross-border issue.
13. The Delegation of Bangladesh, speaking on behalf of the Asian Group, hoped that under the continued able leadership of the Chair the Committee would be able to move forward on the agenda items. The Group regretted that the 20th Session could not reach an agreed outcome and hoped the current session would be able to make head way in some of the important issues for consideration. The General Assembly had encouraged the Committee to continue its work on the three issues on the agenda. With respect to the protection of broadcasting organizations, Part Three of the study on the Socioeconomic Dimension of Unauthorized Use of Signals contained in SCCR/21/2 was informative, as it stated different problems related to the broadcast of signals in a balanced and objective manner and reinforced the needs for exceptions and limitations in the public interest. The Group took particular notice of the gaps in approach and findings in the three parts of the study, especially in the context of the analytical document contained in document SCCR/21/4, and invited the Secretariat to explain how the different parts of the study would be further streamlined into a coherent one. The Asian Group reiterated the need to update the protection of broadcasting organizations which should be done without prejudice to the public interest, including the access to information already in the public domain. It pledged its commitment to move forward on the issue within the mandate given by the General Assembly in 2006 to develop a treaty to protect broadcasting and cablecasting organizations in the traditional sense. The Group took notice of the reports of the regional seminars that had taken place since the 20th session of the SCCR, and expressed its appreciation to the Government of India for organizing the seminar on the Protection of Broadcasting Organizations and Audiovisual Performances held in New Delhi in July 2010. With regard to the protection of audiovisual performances, the Asian Group urged the Committee to continue its work on the proposed treaty and reiterated its readiness to engage constructively on the issue. It welcomed the comments submitted by the Governments of India and Mexico, particularly in relation to the issue of transfer of rights. On exceptions and limitations, the Group considered that that topic was crucial and considered that the updated report on the questionnaire could be a useful basis for furthering discussions. With respect to the issue of greater access to copyright protected works by the visually impaired and other print disabled persons, the Asian Group appreciated the work being

done in the WIPO Stakeholders' Platform and welcomed the fourth interim report. Norm-setting in WIPO should not be seen as limited to intellectual property (IP) but should also reflect a broader social and development context. Therefore, the Asian Group considered that a framework for safeguarding the public interest through exceptions and limitations clauses was very important. The Group reiterated its readiness to proceed with the work on the basis of a treaty proposal put forward by Brazil, Ecuador, Paraguay and Mexico, as well as the other proposals put forward during the last SCCR session.

14. The Delegation of Slovenia, on behalf of the Group of Central European and Baltic States, hoped that the long awaited progress could be made during the session on all substantive issues. It recognized the importance of the legal protection of broadcasting organizations, which needed to be upgraded at the international level. The comprehensive study on Socioeconomic Dimension of the Unauthorized Use of Signals underpinned the endeavors of the Committee to reach that goal. It reiterated its commitment to the ongoing work on the international protection of audiovisual performances. As to the work on facilitating the access to works by the visually impaired and other print disabled persons, it encouraged the Committee to start its work in a constructive and open manner towards finding appropriate solutions for the challenges at stake. All those proposals had merit, but the Group pledged its support to the proposal for a joint recommendation submitted by the European Union as it was a proposal with the most pragmatic and efficient approach to reduce obstacles to equal access to education to persons with a print disability.
15. The Delegation of Mexico, speaking on behalf of the Group of Latin American and Caribbean States, GRULAC, reiterated its support to achieve the objectives of the Committee. It felt that substantive progress in the area of exceptions of limitations was a priority, particularly regarding the needs of persons with print disability. GRULAC supported the proposal put forward by Brazil, Ecuador, Paraguay and Mexico for a treaty which would improve access for the visually disabled and other people with a reading disability, and was also ready to engage in constructive work to adopt a treaty in 2012. That exercise was closely linked to the principles and objectives of the United Nations Convention on the Rights of Persons with Disabilities. GRULAC did not want the same outcome of the June 2010 session of the Committee, and hoped that some space for informal consultations led by the Chair would be available.
16. The Delegation of the European Union expressed its commitment to work in a constructive way on all the substantive issues of the agenda of the Committee. Member States were keen to make progress on the subject of improving and updating the international protection of broadcasting organizations, as demonstrated in the comprehensive study of the Socioeconomic Dimension of the Unauthorized Use of Signals. With regard to the protection of audiovisual performances, it noted the great amount of positive support given to a high level of protection of those performances. It also looked forward to constructive discussions on the four proposals on the table regarding visually impaired persons and copyright, and emphasized that a speedy resolution to the problem of access across borders to works in special format for persons with print disability was enshrined in the joint recommendation submitted by the European Union.
17. The Delegation of Brazil, speaking, on behalf of the Development Agenda Group (DAG), indicated that limitations and exceptions to copyright and related rights was certainly the topic in which developing countries had more direct interest, hence

their desire to comment on it first. After the 16th SCCR session, a great momentum for progress had been made with four different proposals. Although they varied widely in approach, there was a good deal of substantive convergence among them. To the DAG the challenge was not to lose that momentum, but to find ways of building on that substantive convergence with a view of reaching agreement on a program of work on limitations and exceptions. On the protection for broadcasting organizations, it stated that the concern of the DAG related to the risk of granting unnecessarily stronger copyright protection or additional rights, such as technical protection measures, that increased costs and affected access to broadcasts in developing countries. DAG hoped the study on the socioeconomic impact would be discussed during the session. The study was interesting and took into consideration social welfare of society and how to safeguard public interest. The study also said that an array of data, not yet available, was needed to directly measure the effects of the treaty with accuracy. The study clearly established the differences in how theft or piracy of signals differed from piracy of copyright goods, such as books, DVDs, et cetera, and noted that the economic effect of signal piracy was weaker for broadcasting and cablecasting as compared to other copyright groups. With regard to the protection of audiovisual performances, it stated that further work was needed and the best way to proceed was to start where the Committee had left off at the last session. The Delegation noted that the agenda of the session did not include an item for a decision on how the Committee would report on the implementation of the Development Agenda pursuant to the decision adopted by the General Assembly in 2010. It recalled that the Chair's summary of the recent session of the Standing Committee on Patents had referred to the consideration of a standardized procedure that WIPO would propose for relevant WIPO bodies. It therefore suggested that a similar understanding be reached at the session of the SCCR.

18. The Delegation of Chile recalled that the lack of consensus at SCCR/20 had prevented the Committee from making any progress on the three topics on its agenda. There was a need for a new dynamic approach towards the work on exceptions and limitations. It suggested that the Committee embark upon a process of informal consultations to discuss the various positions. Chile pledged its support to engage in constructive discussions on various items on the agenda and hoped delegates would not repeat the mistakes made at the last meeting.
19. The Delegation of Paraguay aligned itself with the statement made by the Delegation of Mexico on behalf of GRULAC, and looked forward to a consensus on topics which particularly affected developing countries, such as exceptions and limitations. Paraguay strongly supported a draft WIPO treaty for better access to persons with visual disability and other handicapped persons in line with the United Nations Convention on the Rights of Persons with Disabilities.
20. The Delegation of Iran associated itself with the statements of the Delegations of Brazil and Bangladesh. An urgent solution to protect broadcasting organizations and prevent signal piracy was needed; therefore Iran supported the establishment of a new treaty for broadcasting organizations, as mandated by the WIPO General Assembly in 2006. It welcomed Part Three of the study on Socioeconomic Dimension of Unauthorized Use of Signals and looked forward for detailed discussion on the related item. It also reiterated its commitment to constructively engage in developing a framework for the international protection of audiovisual performances. It supported the proposal to work on the issue of limitations and exceptions in a global and inclusive approach. It believed there was a sufficient ground for moving toward the harmonization of minimum international standards on

exceptions and limitations. It took note of the progress made by the Stakeholders' Platform and hoped that it would lead to practical solutions to facilitate the access to copyrighted materials in a readable format for persons with print disabilities. It also pointed out that the Platform should be complemented with norm-setting activities toward the adoption of a binding legal framework to ensure sustainable accessibility of the visually impaired persons to protected works. Finally, it associated itself with the statement of the DAG Coordinator to the General Assembly in relation to the need to determine an effective methodology for reporting the SCCR contribution to mainstreaming the development agenda.

21. The Delegation of Peru indicated that the success of the work of the Committee was of vital importance. The Delegation believed that the IP system was not only a fundamental vehicle for the promotion of socioeconomic progress but also should enable flexibility for the balance of rights and duties of creators and beneficiaries. Peru put much effort to improve education, particularly for disabled persons who did not have the necessary resources and, since 2002, had included exceptions for the visually impaired in its copyright law. Peru associated itself with the statement of the Delegation of Mexico on behalf of GRULAC to support a treaty to ensure that persons with disability had access to copyrighted works according to the Convention on the Rights of Persons with Disabilities.
22. The Delegation of South Africa aligned itself with the next statement to be made by the Delegation of Angola on behalf of the African Group, and also with the statement made by the Delegation of Brazil on behalf of the DAG. Against the backdrop of an unsuccessful 20th SCCR session, South Africa was encouraged by current discussions on the role that copyright and related rights could play. It welcomed the efforts of the WIPO Secretariat in the organization of national and regional workshops and in the preparation of the various studies related to broadcasting organizations. Any discussion on a treaty should include the development of a framework or guideline for broadcasting regulators to monitor and exchange information on signal piracy violation within the national jurisdictions. On limitations and exceptions, it reiterated that minimum standards for IP use remained a significant issue not only for South Africa but also for other developing countries and that, if properly applied, limitations and exceptions could play a significant role in advancing the development goals in many countries. It was therefore time to lay the groundwork for text-based negotiation in relation to an international legal instrument on limitations and exceptions based on documents SCCR/18/5, SCCR/20/10, SCCR/20/11 and SCCR/20/12.
23. The Delegation of Angola, speaking on behalf of the African Group, said that the Group would support the progressive development of international copyright standards and the interpretation of certain existing rules in order to provide adequate solutions to the questions raised by the new economic, social, cultural and technologic development affecting a broad range of other stakeholders. The Group recognized the objective of the treaty proposal put forward by the delegations of Brazil, Ecuador, Paraguay and Mexico, as well as the rationale behind the approach of the proposal on a draft consensus instrument for the visually impaired proposed by the United States of America and the draft recommendation for improving access by copyright for persons with print disability proposed by the European Union. However, it reiterated its position on the need to have a holistic approach regarding an international system of limitations and exceptions according to the obligations established by the Convention on the Rights of Persons with Disabilities. The Group thanked the delegations that had made comments on the African draft treaty and promised to share the outcome of

the workshop by the African Group held from 5 to 7 November 2010 with all delegates. The African Group hoped that the SCCR would reach a speedy conclusion to move forward on the negotiation on the two important issues of the protection of audiovisual performances and broadcasting organizations.

24. The Delegation of India aligned itself with the statement made by the Delegation of Bangladesh on behalf of the Asian Group, and by the Delegation of Brazil on behalf of the DAG. India thanked the WIPO Secretariat for its cooperation in holding the Asia-Pacific regional seminars on the protection of broadcasting organizations and of audiovisual performances in New Delhi in July 2010. It indicated that the open-ended informal discussions on the viability of international obligations following the signal-based approach should commence, first, only after the completion of the proposed regional seminars in all of the regions; secondly, after arriving at a set of broad principles on the socioeconomic dimension of the lack of access to information and of the unauthorized use of signals; and thirdly, after developing a document based on the mandate given by the WIPO General Assembly, namely based on the objectives, scope and object of the envisaged protection, following a signal-based approach in the traditional sense. With regard to audiovisual performances, India believed some progress could be made on the existing 19 agreed articles and, for that purpose, it had put forward some comments in document SCCR/21/5 after consulting with various stakeholders including performers and classical musicians. The Delegation endorsed the proposal made by Brazil, Ecuador, Paraguay and Mexico on a treaty for the visually impaired and hoped that the Committee would continue a comprehensive consideration of the issue of limitations and exceptions, namely in areas such as education, research, libraries and archives.
25. The Delegation of Kenya thanked the WIPO Secretariat for the continued commitment towards the SCCR process especially through the organization and facilitation of the regional consultations held in Asia, Africa and South America. Those consultations were instrumental in bringing together Member States and experts to deliberate on issues pertaining to the proposed protection of broadcasting organizations as well as on audiovisual performances. Kenya associated itself with the position of the Delegation of Angola on behalf of the African Group, and reiterated its support for the continuing discussion on the protection of broadcasting organizations based on the signal based approach which was technology neutral. The SCCR should set a timeframe to conclude the discussions since the recently concluded study on the Socioeconomic Dimension of Unauthorized Signals had provided an insight into several issues including the social and economic effects of the proposed treaty on the protection of broadcasting organizations. Kenya acknowledged the importance of access to copyright works especially for the visually impaired, educational and research purposes and emphasized that a holistic approach, as taken by the African Group, should be adopted. It informed the Committee that Kenya had recently reviewed its law to encompass various limitations and exceptions. The draft amendments had were awaiting debate in parliament.
26. The Delegation of the Republic of Korea commended the report on the third part of the study on the Socioeconomic Dimension of the Unauthorized Use of Signals as it provided a good analysis on the impact of a new instrument and also presented ample evidence towards the need to upgrade the protection of broadcasting organizations at the international level. Also, the Republic of Korea supported the adoption of a treaty to protect audiovisual performances. Finally, the Delegation

stated that the topic of improving access of the visually impaired persons was of great importance and should be addressed promptly by the Committee.

27. The Delegation of Russian Federation associated itself with the call on delegates to engage in constructive work towards an agreement on the various issues of the agenda. It recognized that some significant progress had been made regarding the discussion of an international instrument for broadcasting organizations. It urged the delegates to show flexibility in the interest of a final instrument to facilitate access to works by persons with visual impairment and in the interest of education. With regard to audiovisual performances, it admitted that Russia did not see any particular agreement in the near future as not much had been achieved.
28. The Delegation of China expressed its interest in all the three items of the agenda and expressed its hope that the Committee would adopt a positive and flexible approach in relation to all constructive proposals. China hoped all delegations would consider seriously the status of the long-term discussions held during the previous SCCR sessions and make efforts to achieve some substantive progress.
29. The Delegation of Mexico, on behalf of GRULAC, indicated the importance Mexico attached to protection of copyright and related rights, as it was one of the many tools which enable countries to further economic, social and cultural development. In that context it reiterated Mexico's support for the adoption of a treaty on the protection of broadcasting organizations and urged delegates to recognize the urgent need to establish effective protection at an international level for the rights of broadcasting organizations. Given the challenges technological advances had given as well as the economic losses that the sector had undergone because of piracy, it called for a treaty that would enable Member States to effectively combat piracy and signal theft. With regard to protection of audiovisual performances, it indicated that the studies by the WIPO Secretariat showed that the issues affect each and every rightholder, namely, the authors, the entertainers, the performers. Taking into account the fact that current international conventions did not provide adequate protection for artists and entertainers to get fair remuneration for their performances, Mexico would support a treaty for the protection of audiovisual performances. On exceptions and limitations, Mexico reiterated its proposal which gave a fair and balanced proposal on this issue. Mexico placed high priority on better access for people that are visually impaired and other disabled including reading disabled people as shown by the joint proposal of Brazil, Ecuador, Paraguay and Mexico. In conclusion, Mexico called on the Committee to make special efforts in moving forward with regard to the protection of broadcasting organizations, the protection of audiovisual performances, and also exceptions and limitations to copyright for access to works by the blind, visually impaired and reading disabled.
30. The Delegation of Australia hoped that Member States would demonstrate a commitment of flexibility necessary to achieve an effective outcome in all the three substantive areas of the SCCR agenda. The Delegation stated that improving access to copyrighted materials for the visually impaired was important for Australia. Domestically, it had addressed the issue through a system of statutory licenses, which permitted the reproduction and communication of copyright material by institutions to assist people with a print disability. However, obstacles remained for people in developing countries in accessing those materials, and Australia was strongly committed to developing practical solutions to those challenges. Australia believed the four proposals on the table reflected the broad convergence among WIPO members. The Delegation also thanked the Secretariat

for facilitating the outcome of the Stakeholders' Platform and welcomed the launch of the TIGAR project as a positive program which would help visually impaired people by enabling publishers to make their titles easily available in accessible formats through trusted intermediaries. It pledged its openness to advance discussions on other limitations and exceptions in the areas of education and libraries and archives, and said it was ready to support the development of a work plan to ensure its appropriate consideration in a timely manner. Australia pledged its support for the conclusion of a draft treaty on the protection of audiovisual performances. There had been productive informal discussions on the transfer of rights issue and the Delegation was thus ready to work towards the resolution of that key aspect of the treaty. However, instead of reopening the discussion of the agreed 19 articles, it preferred to invite Member States to present additional proposals so as to maintain the existing momentum for the conclusion of the treaty. With regard to protection of broadcasting organizations, Australia stated it remained convinced that an international instrument was needed to address present and emerging technological issues.

31. The Delegation of the United States of America expressed the frustration and disappointment shared by Member States for the lack of agreed conclusions at the previous SCCR session. It associated itself with the statements of the Delegations of Bangladesh, Brazil, India, Mexico, Slovenia and South Korea, and deeply hoped the Committee could build on what the Delegations of Australia and Brazil characterized as a greater amount of substantive convergence.
32. The Delegation of Venezuela aligned itself with the statement made by the Delegation of Mexico on behalf of GRULAC and the statement made by the Delegation of Brazil on behalf of the DAG. Venezuela urged the Committee to avoid positions motivated by personal interest and, instead, to adopt flexibilities which were vitally important to establish international agreements.
33. The Delegation of Ecuador supported the statements made by the Delegation of Mexico on behalf of GRULAC and also by the Delegation of Brazil on behalf of the DAG. It stated that Ecuador, as one of the sponsoring countries of the draft treaty in document SCCR 18/5, would remain firm in its conviction for a treaty on limitations and exceptions in favor of the visually impaired.
34. The Delegation of Uruguay stated that the issue of limitations and exceptions was extremely important to Uruguay, and called on delegates to specifically deal with that issue in line with document SCCR/16/2 presented by Brazil, Chile, Nicaragua and Uruguay in 2008. It reminded delegates that the SCCR had a mandate from the United Nations to focus on the relationship between human rights and IP. It was necessary to strike a balance between the rights of creators and the rights of society to have access to knowledge, as provided by Article 27 of the Universal Declaration of Human Rights.
35. The Delegation of Japan reiterated its support for the work of the Committee on the three specific agenda items, which it expected would be discussed in depth. On the protection of broadcasting organizations, Japan reiterated its strong commitment to move ahead with the discussions. The differences in opinion were on a limited number of specific points and the Committee had to come up with a concrete timetable for discussion in order to be able to reach a consensus on the pending matters. The Secretariat and each Member State needed to further strengthen efforts towards the adoption of the broadcasting treaty. In relation to the protection of audiovisual performances the matter was of utmost importance

from the perspective of protecting rights of audiovisual performers in a networked society. The provisional agreement on the 19 articles reached at the 2000 Diplomatic Conference had to be maintained. Intensive discussion had to be pursued in order to reconvene the diplomatic conference at the earliest opportunity. Each of the proposals on exceptions and limitations constituted a good basis for constructive discussion towards that common goal. The existing concept of the three-step test could serve as a basis to improve the condition of groups with print disabilities. It intended to contribute to the discussions in an open and flexible way.

36. The Delegation of Argentina looked forward to a consensual conclusion of the work of the Committee. Limitations to the use of literary works in favor of the reading disabled had been introduced in its legislation and an international norm in that area was needed. It supported the proposal presented in Document SCCR/18/5 submitted by the Delegations of Brazil, Ecuador, Paraguay and Mexico, as it was closely tied to the WIPO Development Agenda. The international instrument on exceptions and limitations would need to be binding and provide guarantees and substantial solutions to the problems of access to reading material for those with print disabilities. There was also support for the protection of audiovisual performances and readiness to consider the different proposals that would be presented
37. The Delegation of Egypt stated there was no conflict of interest between the African proposal and the proposal presented by the Latin-American countries, although the first was far more general and inclusive than the latter. Egypt was ready to consider supporting the Latin American proposal, although limitations and exceptions had to be set up within a general and inclusive framework. With regard to the protection of broadcasting organizations, it supported a signal-based approach following the General Assembly mandate, so that signals could not be used in an illegal way.
38. The Delegation of Nigeria expressed its satisfaction with the studies and reports presented to the Committee, as well as the regional seminars on audiovisual performances and the protection of broadcasting organizations which had helped a consensus-building process. It supported the statement made on behalf of the African Group and expressed optimism that the work of the Committee would lead to concrete outcomes on the major issues under consideration. Further work was needed on the protection of broadcasting organizations in line with the present mandate of the Committee for a signal-based approach. Although comments were appreciated on all the issues relating to the protection of audiovisual performances, there was no support for the reopening of discussions on the 19 issues on which agreement had been reached. The development of an appropriate instrument to address the needs of blind and visually impaired persons was also important, but continued work on other exceptions and limitations, particularly those touching on the needs of library and archives and education and research, was also required as those exceptions constituted meaningful tools to enable developing countries to benefit from the copyright system. Agreement on a work plan would enable the Committee to deal with all the issues in a timely, efficient and effective manner.
39. The Delegation of Senegal thanked the Secretariat for addressing two important requests made to the Committee which included the holding of regional meetings and the realization of studies to evaluate the economic impact of signal piracy. Although content piracy also needed to be addressed, there was a clear need to improve the legal situation of broadcasting organizations and a working agenda for the adoption of an international instrument was required. In relation to the

protection of audiovisual performances, the already adopted 19 articles could provide an excellent basis for consensus. Limitations and exceptions were also a fundamental issue and a holistic approach was required to facilitate access to information and access to knowledge. The Committee was invited to pursue its technical work with a greater emphasis on the social dimension of exceptions to enable Member States to adopt an international instrument which would respond to those needs. The protection of audiovisual performances and of broadcasting organizations had to be maintained on the Committee's agenda until the level of maturity of the discussions would allow a diplomatic conference to take place.

40. The Delegation of Georgia recalled it had only recently provided adequate and effective protection of copyright, and made a number of important steps at regulatory, administrative and enforcement levels. The recent and most notable development was the creation of the Ministerial Level Inter-agency Coordination Council on Copyright Enforcement that would bring copyright protection to the highest level of the political agenda. The findings of the study on the Socioeconomic Dimension on Unauthorized Use of Signals were commended by the Delegation. It supported the focus of those studies on on-line and traditional broadcasting and shared the common agreement on the need to protect audiovisual performers, copyright creators and owners in a digital environment. While differences remained among Member States as to the scope of exclusive rights of performers and producers, the possibility of a separate treaty on the protection of audiovisual performances needed to be retained as a subject of discussion at WIPO. The Delegation remained convinced that the current balance of limitations and exceptions laid down by the Berne Convention was effective and, while further refinement was always welcome, the Berne framework could be considered as a starting point for the negotiations. It was willing to engage in the Committee's discussions and also remained open for bilateral, regional and multilateral cooperation with other Member States.
41. The Chair noted that several delegations had emphasized a need for informal consultations, and that several delegations had expressed preference for informal open-ended consultations which could be a powerful tool in forging common ground in the negotiations.

PROTECTION OF BROADCASTING ORGANIZATIONS

42. The Chair invited the Secretariat to present the status of work in relation to item 5 of the agenda.
43. The Secretariat informed the Committee that five documents had been made available. The first was document SCCR/21/2, which contained the last part of the Study on the Socioeconomic Dimension of the Unauthorized Use of Signals, the third part addressing the social and economic dimension of the proposed treaty. That part of the study had been prepared by Professor Picard from Sweden, together with Professor Berger from South Africa, and a broadcasting expert from the Philippines, Mr. Fernand Alberto. The second document presented to the Committee was document SCCR/21/4, which was the analytical document on the Study on the Socioeconomic Dimension of the Unauthorized Use of Signals which had been prepared following the request, made to the Secretariat at the 20th session of the Committee, to present a document outlining the main conclusions and findings of the three parts of the Study. The three other documents were the reports of the regional seminars which had been held in different parts of the world

addressing the protection of broadcasting organizations and for some of them the protection of audiovisual performances. Document SCCR/21/3 was the report of the Regional Seminar held in Mexico for Latin-American and Caribbean countries. Document SCCR/21/9 was the report of the Regional Seminar held for Asia Pacific countries in India, which addressed both the protection of broadcasting organizations and audiovisual performances. Document SCCR/21/11 contained the report of the Regional Seminar for African countries on the protection of broadcasting organizations and audiovisual performances, which had been held in Abuja, Nigeria in October 2010 for African countries.

44. The Chair invited the Delegations of India and Nigeria to take the floor to report on the meetings hosted by them.
45. The Delegation of India reported on the WIPO Regional Seminar for the Asia Pacific Countries on the Protection of Broadcasting Organizations which had been held on July 12 and 13, 2010 in New Delhi. The seminar was organized by the Copyright Office, Department of Higher Education, Ministry of Human Resource Development, Government of India, following the conclusions of the 18th Session of the SCCR stating that the Secretariat would organize regional seminars upon requests from Member States to ascertain views on the objectives, specific scope and object of protection of a possible draft treaty following a signal-based approach. The Regional Seminar had been inaugurated by Mr. Uday Kumar Verma, Special Secretary, Ministry of Information and Broadcasting, Government of India. Representatives from Bangladesh, Brunei-Darussalam, Cambodia, Indonesia, Iran, Laos, Malaysia, Mongolia, Nepal, Philippines, Singapore, Sri Lanka, Thailand and Viet Nam had attended the meetings. Mr. Verma, in his inaugural address, had explained that in the last two decades the broadcasting sector in India had witnessed a growth trajectory and paradigm which had few parallels elsewhere and therefore protection of broadcasting rights was of critical significance to the country. While supporting the mandate of the 33rd session of the WIPO General Assembly in 2006 on developing an international treaty for the protection of broadcasting organizations on a signal-based approach, India was very keen to move ahead on the basis of the above mentioned mandate. Webcasting and simulcasting had to be addressed separately once a signal-based protection for the traditional broadcasting sector would be finalized. The seminar had been conducted in the two parts. The first part consisted of presentations on various topics followed by discussions, and the second part consisted of informal discussions. The member countries, after discussing all the issues, had unanimously agreed on the objectives, the specific scope and the object of protection for the broadcasting organizations including the fact that there was an urgent need for a treaty on protection of broadcasting organizations based on a signal-based approach in the traditional broadcasting sense. The open-ended informal discussions on viability of international obligations following the signal-based approach could only commence after submission of the third part of the study on the Socioeconomic Dimension of the Unauthorized Use of Signals, and also after the completion of regional seminars in all regions. On the protection of audiovisual performances, the WIPO Regional Seminar for the Asia Pacific Countries was held on July 13 and 14, 2010, in New Delhi, organized by the Copyright Office, Department of Higher Education, Ministry of Human Resource Development, Government of India. That seminar had been attended by representatives from Bangladesh, Brunei-Darussalam, Cambodia, Indonesia, Iran, Laos, Malaysia, Mongolia, Nepal, Philippines, Singapore, Sri Lanka, Thailand, Viet Nam. The seminar had been conducted in two parts. The first part consisted of presentations on various topics, followed by discussions, and the second part

consisted of informal discussions. Bobby Bedi, producer, Guild of Film Producers of India, Mumbai had stated that as the producer was the person who took the initiative and responsibility for making the work, therefore, he should not be deprived of those rights in audiovisual performances. During the second part of the seminar, the Chair had requested the Member countries to express their views on the major issues pertaining to the draft text. Most of the member countries had agreed that the provisional agreement on the 19 articles had to be the basis for further progress in the negotiations

46. The Delegation of Nigeria recalled that the Regional Seminar for African Countries on the Protection of Broadcasting Organizations and the Regional Seminar for African Countries on the Protection of Audiovisual Performances had been held from 18 to 20 October, 2010 in Abuja, Nigeria. The seminars had been organized by the Nigerian Copyright Commission (NCC) in collaboration with WIPO. The seminars had been held following the conclusions of the 18th session of the SCCR, as well as the conclusions of the 19th session of the SCCR wherein it had been stated that the Secretariat would organize regional seminars upon request from Member States to ascertain views on the objectives, specific scope and object of protection of a possible draft treaty following a signal-based approach. The seminar had been attended by delegates from 19 African countries, namely, Angola, Burkina Faso, Cameroon, Central African Republic, Cote d'Ivoire, Ethiopia, Ghana, Kenya, Madagascar, Malawi, Namibia, Niger, Nigeria, the host country, Rwanda, Senegal, South Africa, Togo and Zambia, including representatives from the African Broadcasters Union (ABU) and broadcasting organizations of Nigeria. The seminars had been structured into two parts, namely presentations followed by discussions as well as informal sessions by country delegates. At the end of the discussions, a consensus had emerged in respect of the proposed treaty on protection of broadcasting organizations: (i) that Africa had to continue to support the ongoing steps towards adopting an international treaty for the protection of broadcasting organizations, in view of the need to provide protection under an international framework for broadcasting organizations and cable operators; (ii) that delegates had agreed to follow the signal based approach which had been mandated by the General Assembly; (iii) that delegates had agreed it had become expedient to accelerate the pace of work on the treaty, and had urged the SCCR to set a time frame on its agenda for the conclusion of work on the treaty; (iv) that delegates had urged the SCCR to work towards the development of a new text of the treaty to enable the 2011 General Assembly to decide on the convening of a Diplomatic Conference; (v) that delegates had also recognized the fast pace of global technological developments and their implications for the rights of broadcasting organizations, and had urged that the emerging treaty be technology-neutral; (vi) that delegates had agreed that the successful adoption of the treaty on the protection of broadcasting organizations remained critical to the African region in the areas of facilitating the global competitiveness of African broadcasting organizations, promoting access to knowledge and information, development and dissemination of diverse African culture, development and dissemination of African broadcast content, education, employment, and poverty reduction. With regard to object and scope, delegates had agreed on the need to stipulate very clear parameters for identifying the target beneficiaries, taking into account the existing international framework, and had agreed to define the rights to be granted, which should be without prejudice to rights in any underlying works incorporated in the broadcasts. The treaty should contain specific provisions on exceptions and limitations to accommodate public interests for the purpose of access to information and knowledge; (vii) that delegates had recognized the challenge in the area of compliance and enforcement, and urged that provisions for

enforcement and a compliance mechanism be inserted as components of the treaty. The second part of the seminar had focused on audiovisual performances with the same number of countries participating. As part of the outcome of the informal session, the consensus that had emerged was that: (i) delegates had agreed to renew their commitment to focus on the objectives of the treaty, which aimed at providing protection for the benefit of performers, especially African performers; (ii) delegates had recognized the potential benefits of the provisions of the treaty to the international community of performers; (iii) delegates had agreed that all the 19 articles agreed under the proposed treaty represented a good framework for adopting the treaty, and had urged SCCR not to reopen discussions on them as advocated by some delegations; (iv) delegates had expressed concern that any provision on presumptions of transfer of rights would negate the fundamental objective of the treaty. Consequently, they had recommended that national laws should determine the issue of transfer of rights in relation to Article 12. The recommendations from the seminars would be discussed with other African countries which had not taken part in the regional meetings.

47. The Delegation of Mexico, on behalf of GRULAC, welcomed the third part of the study on the Socioeconomic Dimension of the Unauthorized Use of Signals. The analysis extended beyond the draft treaty on the protection of broadcasting organizations, which was not only of benefit to broadcasting organizations but also to other stakeholders, such as authors, artists, performers and other rightholders and society at large. Broadcasting organizations were facing a number of obstacles such as signal piracy which harmed the export of intellectual works and the economic development of countries. The studies carried out by WIPO, as well as the regional seminars on the protection of broadcasting organizations had been extremely useful in understanding how signal theft affected not only the rights of broadcasting organizations, but also of the content owners at global level. Effective protection of the rights of broadcasting organizations had to be established at international level, while the issue had been discussed for more than a decade in the Committee. It was time to take decisions to move out of the current deadlock. The objectives, specific scope of application and goals of the protection of a possible treaty could be reviewed within the framework of inter-sessional meetings, convened by the WIPO Secretariat, which could include the participation of all Member States. Another possibility could be to convene a diplomatic conference in 2011, taking into account the fact that although the workshops had been extremely useful, they had been carried out only at a regional level.
48. The Delegation of Kenya supported the statement made by the Delegation of Mexico stating that the studies and meetings carried out had shown that a number of new issues had come up within the last ten years in relation to the protection of broadcasting organizations, which had to be closely analyzed. It supported the proposal of holding an inter-session working group.
49. The Delegation of South Africa noted that the studies and regional meetings on broadcasting had been extremely insightful. It recalled that when the proposal had been made at the 17th SCCR session to carry out a study on the socioeconomic dimension of the unauthorized use of signals, the purpose had been to determine the levels of piracy, how technological developments would affect the proposed treaty and what should be the efforts of combating signal piracy. The country had undertaken similar efforts at national level with the intention of comparing findings. Part One of the study, which dealt with the current market and technology trends in the broadcasting sector, needed to further raise awareness on which platforms

could be used to permit unauthorized access to broadcast signals. The huge impact of redistribution by means of the Internet and other technologies had to be acknowledged to enable the proposed treaty to deal with effective judicial remedies against piracy and unauthorized access to broadcast signals in addition to the technological measures that broadcasters used to prevent misuse of the signal. In relation to Part Two of the study that dealt with unauthorized access to broadcast content cause and effects, the South African study had identified similar forms of piracy as the ones identified in part two of the study. However, its view was that overspill of signals could only constitute signal piracy in some limited cases. On Part Three of the study which addressed the socioeconomic impact of the treaty, South Africa welcomed the analysis. However, it considered that the study had addressed many of the issues in a superficial manner covering two or three pages only, such as for example the analysis on the fundamentals of broadcasting and the economic losses in unauthorized use of signals through the content chain and its impact on costs. The report did not examine the social and economic impact in Africa of the piracy of locally-developed production. The study had concluded that the treaty was likely to increase enforcement costs and could increase monopoly control over content with price effects on consumers. The impact of signal piracy had been raised at the regional seminar for African countries held in Abuja, which had called for an accelerated pace of the treaty negotiations. Signal piracy was a complex process which involved sophisticated technologies available on broadcasting platforms. It raised the question whether signal piracy across all the platforms, mobile, web, or Internet, implied that countries had to be oblivious to technological developments and questioned the relevance of the instrument by the time of its adoption. The draft treaty also required effective enforcement mechanisms which required the judicial authorities to be well equipped to deal with signal piracy cases as well as from the regulatory authorities responsible for issuance of broadcasting licenses. The Committee had to consider how to address signal piracy as part of a code of conduct and behavior for the granting of licenses to broadcasting organizations. That was a specific task for broadcasting regulators. It recommended that as part of the negotiations a specific framework or protocol for broadcasting regulation, information exchange on signal piracy be created, as signal piracy was a cross border issue. The completion of the studies was welcomed and required an acceleration of the pace of discussions on the protection of broadcasting organizations against signal theft. Document SCCR/17/INF/1 could be used as a starting point for further progress and, in particular, its Paragraph 47 which provided two options on the way forward. Option one which recommended the continuation of the process by calling new proposals for consideration by the Committee was the preferred option as the basis of a work plan.

50. The Delegation of the European Union supported the further improvement of the international protection of broadcasting organizations to align it with the protection afforded to other holders of related rights. The study on the Socioeconomic Dimension of the Unauthorized Use of Signals had shown the importance that broadcast media represented in many parts of the world, for culture, entertainment, news and education. The Delegation remained convinced that an update of the international protection of broadcasting organizations was still feasible within WIPO. It encouraged WIPO to continue organizing regional seminars to move closer to consensus on the wish and method for getting results. It considered reassuring that the idea of a treaty and the protection of the rights of broadcasting organizations seemed acceptable to all parties present at those seminars. Since the decision of the General Assemblies of 2007 for agreement on the three items, objectives, specific scope and objective protection could be too cumbersome for

convening a diplomatic conference, it looked forward to an exchange of ideas on how the deadlock could be broken.

51. The Delegation of India stated it required the Committee to follow the mandate given by the WIPO General Assembly in 2007 on the signal-based approach for the protection of broadcasting organizations without any deviation. It also appreciated the submission of the three studies on the socioeconomic dimension of the unauthorized use of signals. There was a need for an international obligation following the signal-based approach to prevent unauthorized use of signals in the traditional broadcasting sector. The outcome of the three-part study on the socioeconomic dimension of the unauthorized use of signals had revealed a number of key facts as highlighted in the document SCCR/21/4. TV-set ownership was lower in developed markets. Clear differences existed between developed and developing countries in the development of the pay TV market. Multichannel and pay TV markets were smaller in developing countries resulting in lower exposure to nonpublic channels and premium content. Developed countries still had an average of 50 percent higher pay TV penetration than developing markets, with the contrast being most noticeable between North American territories of the United States and Canada, with a 91 percent penetration, and southern and Central Africa, Central America, with a 27 percent penetration, and Africa and the Middle East, with 8 percent penetration. Digital rollout was much more advanced in developed countries. By 2012 the majority of the developed nations would have transitioned entirely to digital transmission. Cable TV penetration was normally higher in developed countries. The regions with the lowest cable TV usage were South and Central America, the Middle East and Africa. Analog cable was still prevalent in developing markets, but cable services were moving towards digital DVDC encoding of their signals which allowed broadband Internet and telephony to be delivered by cable. Broadcasting organizations in developing markets had not yet tapped the potential of the on-line environment. Advanced telebusiness services, such as video on demand were also much more available in the developed regions than the developing markets. Internet Protocol Television had developed in some advanced Asian markets but to a lesser extent than in the South and Central American regions. Services relying less on fixed infrastructure such as wire were more available and apparent in developing markets. Technological differences existed between developed and developing countries in the development of the broadcasting industry. However, signal piracy was common everywhere and there was an urgent need to address it by way of agreeing to an international binding obligation, following a signal-based approach, to prevent unauthorized use of signals in the traditional broadcasting sector. The inclusion of webcasting and simulcasting directly or indirectly in the proposed instrument had to be addressed in a careful way. The Secretariat was requested to prepare a document comparing the results and outcomes of the Regional Seminars before the next session of the SCCR, in order to facilitate discussions. The open-ended informal discussions on viability of international obligations following the signal-based approach could commence only after the completion of the proposed regional seminars in all the regions, and after arriving at a set of broad principles on the socioeconomic dimension of lack of access to information and unauthorized use of signals, with a view to developing a document focusing particularly on the following issues: the signal-based approach in traditional sense, second, the objectives, third, the specific scope, and fourth, the objective of protection. A draft document on the above lines was requested for discussion for the 22nd SCCR session in 2011.

52. The Delegation of Japan stated that given the urgency to provide legal protection for the rights of broadcasting organizations, it supported the proposals submitted by the Delegations of Mexico and Kenya for an inter-session working group.
53. The Delegation of Brazil stated that the study on the socioeconomic dimension of the unauthorized use of signals was a very useful document which analyzed the proposed broadcasting treaty from the prospect of multiple stakeholders and gave due attention to the potential effects on social welfare and how to safeguard further interests. The study had noted that the primary beneficiaries of the treaty would be broadcasters and cablecasters at the expense of the audience, consumers and users. The study had established how theft of piracy of signals differed from piracy of copyright goods. The study did not question the rationale and reasons for the treaty which therefore needed further consideration.
54. The Delegation of Venezuela stated that IP was not an end in itself and that a diplomatic conference on broadcasting would be necessary to extend the balance to be struck between private and public interests, through radio and broadcasting. It was not looking only at the right of access to culture and entertainment, but also to education. IP rights in broadcasting had to be strengthened with regard to broadcasting signals which meant that the costs of access would have to be increased especially in the poorest countries. It was not clear from the studies how the treaty would impact on developing countries, depending on what types of obligations governments would undertake with regard to the Development Agenda. The evaluation of the economic cost of the unauthorized use of signals had been made without providing any evaluation of the balance which needed to be struck between the public interest and the right of access to media. The Mexican proposal for inter-sessional meetings could not be supported until the balance between the public and the private interest could be assessed.
55. The Delegation of Angola, on behalf of the African Group, thanked the Government of Nigeria for the organization of the regional seminars on the protection of broadcasting organizations and audiovisual performances, which had assisted many African countries to better understand those issues and looked forward to the implementation of the adopted recommendations.
56. The Chair noted that a series of interventions on the studies had been heard including ideas on the elements to be included in a work program.
57. The Director General of WIPO expressed support for the proposal made in favor of conducting consultations, and noted the existence of substantial common ground among the delegations even though the outstanding issues put forward by delegations required further careful analysis. The studies that had been requested by the Committee to the Secretariat had been finalized. The same applied to the regional meetings that had been conducted as requested. There was no delegation stating they did not want to move forward. The need for further clarification of some outstanding issues had only been pointed out in particular by the Delegations of Brazil, India and South Africa. Given the length of time the issue had been discussed, delegations were encouraged to find a concrete way to move the issue forward through consultations. The item could not be retained on the agenda for an indefinite period of time if delegations proved unable to agree on a way forward.

PROTECTION OF AUDIOVISUAL PERFORMANCES

58. The Chair opened the floor on Agenda Item 6 on the protection of audiovisual performances, and requested the Secretariat to introduce the topic.
59. The Secretariat provided an update on the status of the item since the previous session of the Committee, noting that new proposals had been submitted by Mexico and India, respectively, in response to a circular issued by the Secretariat. Those proposals were contained in documents SCCR/21/5 and SCCR/21/6, and complemented the main working document prepared by the Secretariat for the 19th session of the Committee in document SCCR/19/9, which also contained in an Annex the 19 articles provisionally adopted at the Diplomatic Conference in 2000.
60. The Chair recalled that, in the preceding session of the Committee, there had been requests to organize informal consultations following the submission of new proposals in treaty language, which would then be the basis for discussion at the consultations. As the consultations had not yet taken place, the Committee should identify the most effective steps to advance the work.
61. The Delegation of Brazil favored continuing work towards a treaty on the protection of audiovisual performances. Noting that there had been broad agreement on next steps regarding that issue in the preceding session of the SCCR, the Delegation could support the way forward contained in paragraphs 6 to 12 of the Annex to the Draft Report of the SCCR/21 session, with the establishment of a deadline for submission of new proposals in treaty language, to be followed by scheduling of informal consultations to discuss the proposals.
62. The Delegation of Senegal expressed interest in the proposal of Mexico contained in document SCCR/21/6, which, in its view, showed a possible way forward out of the deadlock concerning the issue of transfer of rights. It was important to establish an atmosphere of trust between audiovisual performers and producers, based on effective compromise.
63. The Delegation of Mexico, on behalf of GRULAC, regretted that the informal consultations scheduled for October 4 and 5, 2010, had been postponed. In its view the consultations would have been useful in developing recommendations for the present session of the Committee in terms of the way forward, including a timetable for negotiations. It believed that the 19 articles agreed in 2000 were a proper basis for negotiation, and that the Committee's work should focus on the remaining outstanding issue from the diplomatic conference, namely the transfer of rights. Agreement on a way forward on that issue would enable the Secretariat to prepare a draft treaty containing 20 articles, which could then be examined in their totality at a new diplomatic conference. The Delegation stated that the issue of transfer could be resolved by an article providing that once the performer has given his or her consent for incorporation of their performance in an audiovisual fixation, then the exclusive rights provided for in the treaty would be transferred to the producer of that fixation, subject to written agreement to the contrary. In addition, the article might provide that in the absence of written agreement, the performers shall be entitled to remuneration for the use of their performances by the users concerned. The Delegation expressed the view that such an article would cover both the exclusive rights of authorization, and the rights to remuneration, for the performers in question.

64. The Delegation of the European Union was encouraged by the evidence of renewed interest among Member States in advancing the work towards a treaty on the protection of audiovisual performances, which was long overdue. It stated that the open-ended consultations that took place in May 2010 were a useful exercise, and hoped that the consultations planned for October 2010 would be rescheduled to take place as soon as possible in the near future. It looked forward to discussions based on the 19 articles agreed at the diplomatic conference in 2000, following the submission of new proposals from those Member States wishing to present them.
65. The Delegation of Angola, speaking on behalf of the African Group, reiterated the Group's position that the 19 articles provisionally adopted in 2000 were a good basis for discussions on a future treaty, while the issue of transfer of rights would require fresh examination.
66. The Chair indicated that while the floor was still open for interventions on the agenda item concerning protection of audiovisual performances, his tentative conclusions for that item would be based on the proposal to adapt the draft conclusions from the SCCR/21 session as a basis for establishing a date for the submission of new treaty-language proposals, followed by the scheduling of informal consultations before the next session of the Committee, with the understanding that the Committee would be working on the basis of the 19 articles provisionally agreed in 2000.
67. The Delegation of Nigeria expressed support for the position of the African Group, and was optimistic that the work of the Committee regarding audiovisual performances would lead to concrete outcomes during that session. That subject was of utmost importance to Nigeria, as illustrated by the rising economic and cultural significance of the film industry known as Nollywood. Nigeria was definitely prepared to reach out to other Member States in order to make sure that work was taken on the treaty. Referring to the African regional meeting that had recently taken place in Abuja, he recalled an indigenous saying that aptly described the consequences of lack of protection: "The producers are chickens, and will never be safe so long as the performer is hungry." Nigeria supported the outcome and recommendations of the regional meetings held in Abuja and in other regions of the world. It agreed with the position that the 19 articles provisionally agreed in 2000 were a good framework for concluding the treaty, and that those articles should not be up for discussion. Nigeria was also willing to review national laws on the transfer of rights.
68. The Delegation of the United States of America noted its long support for the conclusion of a treaty to provide audiovisual performers with the same level of protection as WIPO had established for performing musicians in the 1996 WPPT. Like the Delegations of Angola, Mexico, Nigeria and the European Union, the United States believed that the 19 articles completed at the 2000 Diplomatic Conference should remain the firm basis of a diplomatic conference. As the Delegation of Mexico had noted, no backward steps should be taken. Nonetheless, the United States was willing to hear specific proposals concerning the 19 articles, in recognition of the interest of certain delegations in expressing new ideas. Regarding the issue of transfer of rights, the United States was in the process of finalizing its submission to address that outstanding issue based on the joint work that has been done by the actors and film producers in its country. The Delegation appreciated the open-mindedness of many delegations concerning resolution of the transfer issue both at recent meetings of the SCCR and in regional

meetings such as the one that took place in Abuja. Referring to the proposal that it and other delegations had made at the SCCR/21 session for a timetable for further submissions, the United States expressed disappointment over the failure to reach overall agreement on the SCCR conclusions. It would support adapting paragraphs 6 to 12 of the Conclusions of the Chair from the SCCR/20 session as the framework and conclusions for the current meeting on the issue of protection of audiovisual performances.

69. The Chair noted that, based on the discussions on that item of the agenda, he would prepare provisional conclusions for the future work of the Committee based on the Conclusions of the Chair on the issue of audiovisual performances from the SCCR/20 session.

LIMITATIONS AND EXCEPTIONS

70. The Chair opened the floor on Agenda Item 7 on limitations and exceptions and requested the Secretariat to introduce the topic.
71. The Secretariat presented document SCCR/21/7, which was the updated report on the question of limitations and exceptions. In June, a first report on limitations and exceptions covering 41 countries was presented. The updated report covered 61 replies sent by Member States. The idea was not to present a report answer by answer given by each Member State, but rather to present the main trends of national approaches regarding limitations and exceptions. That report covered various areas. The second document was document SCCR/21/10, an interim report of the fifth meeting of the Stakeholders' Platform that had taken place on October 23, 2010 in New Delhi. The purpose of that meeting was to take stock of the action points already agreed on during the meeting held in Geneva in May 2010, and to receive information concerning the work carried out by the three subgroups of the Platform, namely: the trusted intermediaries subgroup, the technology subgroup and the capacity building subgroup. The TIGAR project (Trusted Intermediary Global Accessible Resources Project) had been launched recently as the result of close collaboration between WIPO and organizations representing authors, publishers and blind and low vision persons, including the World Blind Union (WBU) and the International Publishers Association (IPA), and showed promise for providing access to a wider range of accessible books. WIPO would provide the technical support for the TIGAR project.
72. The Chair suggested opening the discussions on the questions about the proposals on the table, namely the proposal by Brazil, Ecuador, Paraguay and Mexico (SCCR/18/5), a draft consensus instrument presented by the Delegation of the United States of America (document SCCR/20/10), a proposal from the African Group, (document SCCR/20/11) and a proposal from the European Union (document SCCR/20/12). The Chair suggested examining each proposal carefully to discuss the provisions contained in the four proposals and to find common ground.
73. The Delegation of Venezuela proposed to focus on issues that had not yet been discussed.
74. The Delegation of the United States of America noted that it would be useful for the Committee to go through a detailed discussion of each element of the four proposals. The Delegation suggested that as an initial matter preambular

language should not be discussed. Each proponent should present those articles that were central to their proposal.

75. The Delegation of Brazil indicated that, since four countries proposed the draft treaty for the visually impaired, some coordination was needed among the co-sponsors prior to presenting their views.
76. The Delegation of Angola, on behalf of the African Group, wondered if the Committee could really analyze each of the four proposals proposition by proposition and article by article, or could just take one of them as a basis.
77. The Chair proposed that the Committee could go through the proposals considering them article by article.
78. The Delegation of Venezuela suggested to prepare a framework with the elements of the four proposals and, if there were any doubts on the possibility of making progress, on article by article. That framework would be most useful.
79. The Delegation of United States of America noted that the suggestion to put pieces of the four proposals side by side might be appropriate if the Secretariat had time to prepare a detailed document. He suggested starting with the proposals as they existed individually.
80. The Delegation of Egypt supported the idea of discussing the four proposals, but the Committee should agree on the way to study and discuss them. The examination of each proposal article by article could take a very long time. The delegation suggested focusing on the basic and principal elements of each proposal. The Chair and the Secretariat should carry out an analytical study on the four proposals to indicate the common ground and the differences amongst the four proposals.
81. The Delegation of Venezuela indicated that it would be useful to have a framework, not an analytical framework but a parallel presentation of the texts of the four proposals.
82. The Chair noted that a parallel presentation of the texts could be useful in a technical sense, but going through each text on an individual basis also served the equal treatment of the proposals
83. The Delegation of Brazil supported the idea put forward by the Delegation of Venezuela. It would be more fruitful to compare side by side the proposals concerning the main substantive points. The Delegation suggested that the Secretariat prepare that document.
84. The Delegation of Australia acknowledged the value of the four proposals. In the absence of an analytical comparative document, the Delegation suggested to go through each proposal, as it would help to understand their core elements. It was also the fairest way at that point of the discussions and it would throw up the substantive issues that would need to be discussed at a later time.
85. The Delegation of Angola, speaking on behalf of the African Group, was not entirely satisfied with the proposal of selecting topics for discussion. The Delegation did not see how the Committee could examine that document paragraph by paragraph, article by article. A work program was needed to

determine how to move forward. The four proposals were quite different: three of them only concerned the visually impaired. The African proposal was much broader.

86. The Chair indicated that he proposed to select the most important articles from the various proposals and to explain the elements of the African proposal that were not found in the other proposals. He noted that apparently the majority was in favor of going through each text.
87. The Delegation of the Russian Federation noted that the most optimal approach from a legal point of view would be to have a table where all four proposals were in parallel to find out the common elements which did not even need discussion. He supported the idea of taking up the basic topics, for instance, six topics based on the four proposals to establish a single document and a unified opinion on the issues. Such an approach would enable the committee to progress faster towards a final document, although the Delegation would prefer a document summarizing all the proposals.
88. The Director General of WIPO indicated that the objective of the discussions over the following day should be to get an understanding of the various proposals. He appreciated the suggested approach where the Committee could quickly reach a list of issues that could be discussed. He suggested examining the question of minimum domestic provisions, the question of importation and exportation, remuneration, the identification of the beneficiaries, the types of work, the formats covered and the issue of trusted intermediaries. An additional category of other issues would give any delegation the possibility of raising any issue that was not already covered in by the list proposed.
89. The Chair underlined the proposal made by the Director General of WIPO to select topics to be discussed and to add another category where the African Delegation could explain its proposal.
90. The Delegation of Angola pointed out that it was very important to have a focus on the discussions. It feared the Committee was beginning negotiations informally without having done the preparatory work, therefore no agreement could be reached.
91. The Delegation of the United States of America supported the approach proposed by the Director General of WIPO. It did not consider that the Committee was in any way in a negotiating phase, not even in pre-negotiating phase. The Delegation considered that the Committee was just in an informational phase so as to develop a deep understanding of the differences among the proposals and to allow delegations to understand what they supported and what they could not support.
92. The Delegation of Chile wished to start the substantive work of the Committee. Analyzing the four proposals would be useful. It was an important exercise which must be undertaken. However, the Delegation doubted that such an exercise would give the answer as to how to move forward if there was no work plan. It proposed to hold informal consultations under the Chair's leadership to discuss that work plan.
93. The Delegation of Venezuela asked the Secretariat whether or not it could prepare a document containing a comparative table of the proposals. That proposal was

made in June and was not accepted. It wondered why it would be so difficult to prepare a comparative table in such a short time.

94. The Director General of WIPO replied that such a document could be prepared, but it would need to be done with a great deal of care and should be made available in all languages. For those reasons, it would not be available that week for discussions but it would be prepared for the next meeting of the Committee.
95. The Delegation of Belgium, on behalf of the European Union and its 27 Member States, stressed the need to have a technical discussion on each proposal in order to get the best understanding about each of them. The idea of handling the issues by selected topics was also an idea that was quite tempting.
96. The Delegation of Senegal pointed out that in paragraph 19 of document SCCR/20/13 a possible solution could be found which would allow the Committee to move forward and to see more clearly how to work on those issues. That paragraph dealt with the proposal made by the United States of America and referred to a non-selective global approach. The African Group had endorsed that approach.
97. The Delegation of Venezuela thanked the Director General of WIPO for his reply but stated that it was not convinced. The Delegation asked whether the Secretariat would prepare the analytical table and translate it for the next session.
98. The Delegation of Brazil noted that the draft report of the last session contained ten pages of recorded discussion on the substance of the proposals. It wondered what would be the concrete benefit in repeating and restating the positions already put forward in the previous session. The Delegation suggested convening the Committee in an informal mode to discuss the way forward in terms of not only procedure but also of substance. For that reason, it reiterated the idea of an exercise of comparison among the substantive issues contained in the various proposals.
99. The Delegation of Venezuela noted that the issue was an important one. The Delegation wished to submit to the Secretariat a proposal, coming from the civil society, which could serve as a basis for discussions.
100. The Delegation of Angola pointed out that the African Group recognized the importance of making progress with a view to the adoption of an international instrument. It thanked the delegations which declared themselves in favor of the global and holistic approach. The African Group wished to submit a roadmap which should guide the discussions so that a fair amount of time could be allocated to each proposal.
101. The Chair thanked the Delegation of Venezuela for presenting the third possibility of moving forward in plenary.
102. The Chair invited the proponents to highlight the important items in their proposals and to allow the possibility to ask questions and comments.
103. The Delegation of Venezuela referred to the proposal transmitted by its Delegation and pointed out that it was an act of transparency. It underlined the need for open consultations of informal nature.

104. The Chair indicated that to have an open plenary with the presence of non-governmental organizations would serve the interest of transparency for everybody in that process.
105. The Delegation of Ecuador said that it favored the holding of more informal discussions to work on a text relating to the mandate, including a work plan reflecting the different positions.
106. The Chair noted that that proposal would imply to interrupt the deliberations on the substance and the presentation of the proposals, in order to focus on the future work.
107. The Delegation of Brazil supported the views expressed by the Delegation of Ecuador. It believed the work on the substance would be more productive after finding a way forward.
108. The Delegation of Angola supported the comments made by the Delegation of Brazil and other countries.
109. The Chair asked whether it would be acceptable for all the delegations to leave the whole substance aside and start concentrating on the steps of future work.
110. The Delegation of Belgium, on behalf of the European Union and its 27 Member States, underlined the importance of reaching agreements about a work plan. It would perhaps be desirable to have those two approaches running alongside one another, namely to start the discussions on substance, while also bearing in mind that there was extensive work going on in the sidelines relating to the work plan. Alternatively, the Delegation suggested the possibility to adjourn that session to work, for instance, on the African proposal.
111. The Delegation of Australia stated that it would prefer to look at the substance of the proposals. That did not diminish the importance of developing a practical and proper work plan. But it seemed there were already mechanisms under way to develop a work plan. The Delegation considered the Committee should try and advance both those issues.
112. The Delegation of Canada endorsed the comments of the Delegation of Australia.
113. The Chair suggested going through the proposals without very much attention on the provisions contained in the proposals, as there would be no negotiations in the foreseeable time. He invited the Delegation of the European Union to take the floor to present its proposal.
114. The Delegation of the European Union noted that it proposed a joint recommendation, which was obviously not binding as such. It underlined the importance of the provision introduced under 1(c) of its proposal, which included dyslexic persons. Within the European Union the total number of blind persons, visually impaired, print disabled and dyslexics would account for between 10 and 12 percent of the population. The recommendation provided that a work in accessible format was a work that was either produced in an accessible format at the time of creation, in Braille or audio, or a work that was produced initially in print, physical format, and then translated into some sort of digital format. Publishing houses were beginning to employ new technologies to produce works in digital format *ab initio*, which meant that persons could then use their special programs to

translate those works into accessible formats on their own computers or their book reading facilities. The recommendation intended that trusted intermediaries were actually organizations already involved very directly with persons with print disabilities. As long as the trusted intermediary was recognized as such, it could work in the context of the cross-border access for print disabled persons. Although the recommendation was not a binding instrument, it was important to encourage those Member States that actually did not have an exception in their copyright laws for the benefit of disabled persons. In the recommendation, the exceptions should cover both physical and digital versions of works, and should cover uses for the specific beneficiaries for non-commercial purposes. The second paragraph of Article 2 contained a reference to the three-step test, which provided a framework under which exceptions should be used. The third paragraph provided that remuneration should be provided to the rightholders. The World Blind Union and other organizations mentioned that they wanted to be able to buy the same books, at the same time, and at the same price as sighted persons. The last paragraph of Article 2 mentioned that if commercial copies were available, works would not necessarily have to be made under an exception. Article 3 encouraged Member States to set up trusted intermediaries according to the conditions described in the definitions in Article 1(4). Article 4 and 5 dealt with the cross-border aspect which was of prime importance. Article 4 covered works that were in a physical format. Those works could travel if they had been made under an exception, or if they have been made under license. The works should be transferred through a trusted intermediary. Article 5 dealt with works that were in a digital, online format that in any event could be transferred through a trusted intermediary. Article 6 provided a notice to rightholders regarding the use of their works. In order for interested parties to know where those works in accessible format were to be found, the proposal suggested the development of an online international accessible works service. Such a service was already being established at the European level to facilitate the access. It would avoid having to reproduce the same text many times in different parts of the world and reduce the costs. The last article of the EU proposal indicated that awareness should be raised amongst all stakeholders, the public and private bodies, and the public at large, concerning the needs of people with print disabilities. The Delegation stressed that although in Europe exceptions were in place in copyright laws, those exceptions vary widely. Further work to facilitate the cross-border aspect was needed. The proposed joint recommendation could be adopted quickly without a diplomatic conference, and without the risk of a treaty which might not be ratified by many countries.

115. The Chair asked whether the catalog listing accessible works would be mainly used for locating the accessible formats or versions of the works.
116. The Delegation of the European Union indicated that, as a first step, the catalog would provide information on the location of the work, to facilitate access to it.
117. The Delegation of Mexico asked the European Union Delegation to expand on the arguments as to why they wanted a non-binding recommendation.
118. The Delegation of the European Union pointed out that the prime concern was to try to do something that would be quick. Unfortunately, WIPO had a few treaties that had not been ratified by many Member States. It wondered how many Member States would actually ratify a treaty. The joint recommendation would have a very similar purpose, and would in any case attract Member States' attention.

119. The Delegation of Paraguay wondered whether the European Union could support the idea that a treaty could ultimately become possible as a fairly rapid option.
120. The Delegation of the European Union underlined the fact that the proposal made by Paraguay and the co-sponsors actually spurred the European Union into also thinking about something more speedy, in the form of a joint recommendation. The Delegation looked forward to talking about the treaty proposal but, as a first step, it wished to support the joint recommendation, since it was the first time it was presented in the plenary. There were two other proposals on the table, which the Committee had not had a chance to examine in detail. The Committee should look at all four proposals more carefully over the next session, so as to negotiate an agreement on those texts as well as the way forward.
121. The Delegation of Venezuela underlined that there were 80 million poor people who did not have access to education. The quickest way was not always the best one, and the potential treaty and ratification were feasible to a larger extent.
122. The Delegation of Egypt pointed out that a number of questions must be answered in order to achieve progress. It asked whether there were countries committed politically to accept the restrictions of limitations and exceptions, and to what extent those countries could accept limitations and exceptions, namely for visually impaired or to other beneficiaries as included in their national laws.
123. The Delegation of the European Union reiterated its concern about the pace of work. It preferred aiming at something which was result-oriented and would serve all future generations. It believed that positive results could be achieved by a joint recommendation that could be revisited in the near future. The European Union was committed to working to help the print disabled and anybody else who would need adequate copyright flexibilities. Delegations were actually working on a future work program which was inclusive and looked at all the different exceptions and limitations.
124. The Delegation of the Russian Federation wondered whether that document was a legal document or purely a technological paper.
125. The Delegation of the United States referred to Article 1, subparagraph 3 of the European Union proposal, which provided that any work which was to be modified into an accessible format must be lawfully acquired. The Delegation sought further explanation about what was meant by 'lawfully acquired' and asked whether it could mean a copy acquired pursuant to a national exception. With respect to subparagraph 4, it wondered whether the European Union was considering specific guidelines for countries to use in setting up trusted intermediaries. The Delegation also wondered whether an institution that was mostly involved in the delivery of services to the beneficiary population, but not necessarily the production of the works or their transfer, would actually qualify as a trusted intermediary. It gave the example of a department at a university coordinating special education services for students. Finally, the Delegation required clarification on a phrase contained in both Articles 4 and 5, namely to be subject to a specific export license granted by the rightsholder.
126. The Delegation of the European Union referred to the question from the Delegation of the Russian Federation and confirmed that its proposal was not a legal binding document as such. However, to a certain extent, it could be binding if the Member States put exceptions into their copyright laws and included a practical framework

to facilitate the cross-border aspect in question. As to the questions of the Delegation of the United States of America, the Delegation clarified that an accessible format that would be 'lawfully acquired' could be produced under a national exception. It would also be something done with the knowledge and acceptance of rightholders. On the trusted intermediaries, guidelines were being developed at European level as part of the framework for the implementation of the underlying Memorandum of Understanding. Those guidelines echoed similar ones developed by the WIPO Stakeholders' Platform and would be available in early 2011. As to the type of institutions, the original definition of trusted intermediaries did not allow necessarily for special schools to distribute accessible works, but some efforts were being made to encompass them in the definition. As to the question on Article 4 related to the specific export license, model licenses were also being developed at European level for early 2011.

127. The Delegation of Senegal asked whether the European recommendation could evolve at a higher status such as a binding instrument. Moreover, it sought clarification regarding the answer given to the Delegation of the United States of America whether or not the approval of rightholders was necessary within the framework of the limitations and exceptions already granted. Also, the Delegation referred to point 3 of Article 1 of the European proposal and asked whether there was a possibility of including a provision in the area of moral rights. Finally, it sought clarification regarding the possibility of including orphan works in the scope of the European proposal.
128. The Delegation of Brazil looked forward to maintaining that kind of frank dialogue to find an effective and reasonable solution for the visually impaired but insisted on developing a frame and timetable to run that dialogue. The European Union proposal did contain a provision in Article 2 requiring States to establish exceptions to copyright for the benefit of persons with print disabilities, but in a way that weakened the idea of exceptions and limitations by promoting contractual solutions based on the Stakeholders' Platform almost on an equal footing. Moreover, the text foresaw that Member States might ensure that rightholders receive adequate remuneration for the use of their works. The Delegation noted that a compulsory licensing system was not the same thing as a limitation or exception created for the benefit of persons with print disabilities.
129. The Delegation of the European Union referred to the questions of the Delegation of Senegal. It noted that there were some precedents in WIPO, and there were recommendations that later became treaties. Therefore, the European proposal was a starting point. As to the question concerning rightholders' approval, it clarified that it was only necessary within the framework of a license. However, if there was a true exception, then only remuneration should be paid to the rightholders. The recommendation proposal furthermore indicated that even if there was no exception in the destination country, then the work could be made available through the trusted intermediaries. As to the question on moral rights, the Delegation did not anticipate any opposition to including them. Finally, the question of orphan works could be looked at separately, as the European Union was working on a possible legal instrument at the moment.
130. The Delegation of Ecuador supported the comments made by the Delegation of Brazil on the European proposal and the need to set up a work program to obtain tangible results. The efforts should be proportional to the size of the book famine problem, and an international instrument should address effectively the lack of

harmonization among the national limitations and exceptions for people with visual impairments.

131. The Delegation of the European Union noted that its Members actually had a diversity of national exceptions for the visually impaired. Some were very narrow and some were very wide. The important issue for was the cross-border aspect and how to solve it in a practical way. Even if exceptions were identical, it still would not help. Something was needed to get works in accessible formats moving across borders, as national exceptions were territorial and not international.
132. The Delegation of Mexico, on behalf of GRULAC, was encouraged by the statement of the Delegation of the European Union on how recommendations could evolve into treaties. It asked whether that Delegation would be ready to adopt a two-step approach, to move from a recommendation to a treaty. It recalled that the Convention on the Rights of Persons with Disabilities had been adopted in December of 2006, had entered into force only 19 months later, and had been implemented by many countries. Similarly, the question of exceptions and limitations for the visually impaired, although very broad and far-reaching, had a very humanitarian aspect, something that the Committee must always bear in mind in carrying out its work.
133. The Delegation of the European Union confirmed that efforts were being made to streamline all issues encompassed in the Convention on the Rights of Persons with Disabilities across the work of the European Commission. Moreover, the European Directive of 2001 already provided a copyright exception for all persons with disabilities. The focus on the specific issue of print disabilities was due to the maturity of the discussions on that particular topic.
134. The Chair invited the Delegation of Angola to present the proposal of the African Group.
135. The Delegation of Angola, on behalf of the African Group, said that the introductory paragraphs recalled the recommendations of the Development Agenda that were put forward during the General Assembly in 2007. They also recalled the agreement during the 18th and 19th sessions of the SCCR. The African Group did not want to block discussions regarding the nature of the instrument. There was enough flexibility to pave the way for a treaty or joint recommendation. Operational paragraph 2 enshrined the wish to develop an international instrument within the biennium 2011-2012. Paragraph 2(b) referred to the way the mandate could be enforced, whether via three working groups or inter-sessional groups similar to those organized for the Intergovernmental Committee on the matter of traditional cultural expressions. Paragraph 2(c) mentioned that all proposals were a very good working basis to begin the discussion. Paragraph 2(d) included a recommendation to the General Assembly in 2012 on a draft text of an international legal instrument or instruments to ensure the appropriate limitations and exceptions to allow access of persons with disabilities, with a view to the organization of a Diplomatic Conference. Paragraph 2(e) proposed that the International Bureau continue to assist the SCCR and to provide the necessary input and also funding for participants from developing and least developed countries in conformance with the usual formula. The proposal also included an annex which would contain the provisional dates for the proposed activities.

136. The Delegation of the European Union asked whether there would be a possibility to have further clarifications on the African Group proposal, as well as other proposals.
137. The Delegation of Angola, on behalf of the African Group, recalled that the presentation of the African Group proposal had been made at the previous SCCR session. The Group wished to discuss the different areas touched upon in the substance of the proposals, rather than any specific text.
138. The Chair suggested that other delegations be provided with the possibility to ask questions concerning the substantive proposal of the African Group.
139. The Delegation of Angola, on behalf of the African Group, accepted the Chair's proposal and presented a summary of the African Group proposal similar to the one provided during the 20th session of the SCCR held in June 2010.
140. The Delegation of Senegal noted that the Delegation of Angola had referred to a first version of the proposal. However, African delegates had been working during the previous weekend to prepare a new version. Articles 11 and 20, on respect for privacy, no longer existed in the new version. Moreover, there was no reference to Article 10 of Berne Convention.
141. The Delegation of the European Union said that it would be fruitful to have a discussion on the African Group proposal so as to have a deeper understanding of that proposal. Article 2, for instance, said that the purpose of the treaty was to provide minimum elements of flexibility to be included in national copyright legislation, with the view to allowing various beneficiaries access to protected works. The Delegation asked what 'minimum flexibilities in copyright laws' meant and whether this wording covered exceptions and/or compulsory licenses.
142. The Chair requested a pause as the Delegation of Angola was receiving an urgent phone call.
143. The Delegation of South Africa pointed out that the Delegation of Angola was not the only Delegation of an African country that could respond to questions concerning the African Group proposal. It also reiterated its support for the statements on the process issues made by the Delegations of Ecuador, Brazil, Venezuela and others, to focus on the work program. The African Group was very open to answer those questions during the negotiations when the Committee entered into the substantive issues at the next session.
144. The Delegation of Brazil expressed its support for the African Group proposal, as it took into account the discussions held in the previous sessions, where different positions had been expressed without reaching any conclusion. It hoped that in the context of the upcoming consultations, delegations would have the opportunity to make more detailed comments.
145. The Delegation of Algeria said that the African Group showed great flexibility in putting on the table a proposal which could help the Committee to avoid repeating the impasse experienced in the previous session. Delegations would risk putting the cart before the horse if they began discussions on substance before having a defined process.

146. The Delegation of Angola, on behalf of the African Group, said that it was important to maintain confidence and balance.
147. The Delegation of the European Union asked whether it could still ask some questions to the Delegation of Angola on the African Group proposal.
148. The Chair said that was a correct understanding. All proposals should be treated in the same way in order to achieve a conclusion useful for progress. He referred to the procedure to be followed by the Committee during the rest of the week.
149. The Delegation of Angola, on behalf of the African Group, proposed that delegations put their questions in writing so that answers could be carefully prepared.
150. The Delegation of the European Union was of the understanding that delegations were prepared to have an exchange of information and views, as well as ready to answer questions. It was a bit strange that the Delegation of the European Union could not get an immediate answer to its questions, when actually it had indeed answered all questions asked by other delegations. In any case, it wanted to put on record five preliminary questions on Articles 2, 4, 5 and 8 of the African Group proposal. As to Article 2, it wondered what 'minimum flexibilities in copyright laws' meant, whether this wording referred to exceptions and/or compulsory licenses. Also, it asked what contracting party would be obliged to introduce such flexibility. It also asked that in the case a contracting party was required to introduce exceptions, how that related to exceptions contained in the Berne Convention, the Rome Convention, the WCT, the WPPT and the TRIPS Agreement. As for Article 4, it asked why the formulation differed from a more classical formulation, for example, the one contained in Article 1 of the WCT and WPPT, which stated that nothing in those treaties would derogate from existing obligations that contracting parties had to each other under the Berne Convention and other treaties. Furthermore, Article 4 seemed to provide for a mandatory exception for visually impaired persons as mentioned in the comments on Article 2. Article 4(b) stated that the treaty was a special agreement as defined in Article 20 of the Berne Convention, but the Delegation questioned whether it actually complied with the conditions laid down in that Article, for instance that it should not be contrary to the Berne Convention. More specifically, the Delegation wondered whether the deliberate omission of the three-step test could not be considered as contrary to the Berne Convention. As to Article 5, it seemed again the treaty provided for a mandatory exception, as already noted in the comments on Articles 2 and 4. It questioned how it related to the five treaties already mentioned. As for Article 5(c), the Delegation noted that commercial rental was an exclusive right provided under Articles 7 of the WCT, 9 of the WPPT and 11 of TRIPS. It queried how it was possible to confer commercial rental rights on for-profit entities on the basis of an exception for the benefit of visually impaired persons in relation to the aforementioned rights. It also asked whether some safeguards against possible abuse by for-profit entities needed to be considered. As for Article 8(e), the Delegation recalled that it had proposed to tackle the subject of orphan works in the SCCR in the past. It was a complex subject which merited appropriate consideration. It was about identifying and finding the rightholder and providing solutions in cases the rightholder could not be found. Simply providing an exception for orphan works without having studied and discussed the issues more in depth did not seem appropriate.

151. The Delegation of Angola, on behalf of the African Group, requested a copy of the questions asked by the Delegation of the European Union so that the African Group could study them and then give the best possible response in writing or orally during the next session of the SCCR.
152. The Delegation of Mexico, on behalf of GRULAC, noted that non-technical questions could be answered in order to avoid any confusion. Terminology such as 'orphan works', 'moral rights', 'education' and 'archives' needed some clarification. It requested that the Delegation of Angola give answers in that respect, if possible, and explain the goal of the African Group proposal broadly.
153. The Delegation of New Zealand referred to Article 2 of the African Group proposal, which explained the relationship of that proposal to international treaties, in particular to the three-step test. That test was far from being straightforward in terms of its application, implementation and interpretation. Indeed, it had been subject to much debate in courts and among many policymakers. Nevertheless, the test was in reality a leeway to create limitations and exceptions. In that connection, the Delegation asked whether there had been any thinking or debate amongst the drafters of the African Group proposal on that particular issue, i.e., what could be the appropriate approach to deal with the three-step test in the context of the proposal, how provisions could comply with the test, and how the test might be interpreted through adaptation to a contemporary context. As to Article 15 and, indirectly, also Article 5, the Delegation noted that there was no clear distinction between copies distributed in online or offline formats. In that respect, the Delegation asked whether the African Group would see in that distinction something useful to consider given the risk of piracy with the distribution of electronic copies.
154. The Delegation of Italy referred to the question of moral rights under Article 12(b) of the African Group proposals, and wondered if express provision for moral rights was unnecessary given that it was already set made in the Berne Convention. A second question was whether the African Group did not feel that there was a possibility of not having any control with regard to circumvention of technical measures. A third question was in relation to contracts, as no international treaty governed contractual matters on copyright. A provision in that respect would be rather novel and remarkable, and would touch a whole system of rights in both common law and civil law traditions. The Delegation noted that beneficiaries did not have any contract with the rightholders, so it was difficult to understand the consequences of Article 14 in the proposal.
155. The Delegation of Senegal reassured all delegations that the questions that had been raised would have a relevant reply. The African Group would submit a revised proposal that took into account all the concerns raised.
156. The Delegation of Australia supported the views of the African Group regarding the critical need to have a balanced copyright system for the benefit of all in society. Each category of limitations and exceptions needed to be examined on its merits, goals and outcomes. For example, the provision of exceptions and limitations for the visually impaired aimed at allowing those persons to fully participate in society, whereas the benefits of exceptions and limitations for archives might be characterized as the preservation of the nation's culture. As to Article 2, the Delegation was interested in knowing the scope of minimum flexibilities in national laws. A more specific question was related to public teaching and schools, and how other educational institutions would be dealt with. In relation to Article 4, the

Delegation asked how the proposal was consistent with Article 20 of the Berne Convention and Article 22 of the Rome Convention and any other instruments listed in Article 4. The Delegation also asked what kind of practical benefits the operative articles that mandate exceptions would provide to countries that had the capacity to craft exceptions flexibly under the three-step test. It questioned whether the mandated exceptions actually restricted the ability of a Member State to provide local solutions according to its own set of circumstances. Finally, the Delegation supported the comments made by the Delegation of Italy.

157. The Delegation of the United States associated itself with the questions and comments from the Delegations of Italy, Australia and the European Union. As to Article 1 on definitions, as copyright was defined in a rather limited fashion, the Delegation asked whether the provision should be read in conjunction with other specific provisions of other treaties listed elsewhere in the proposal, such as the Berne Convention. It also asked whether a definition of orphan works could be contemplated. Turning to Article 5(a), it sought clarification regarding how the eligibility of disabled persons would be determined, and whether any role for certain entities had been contemplated, for instance trusted intermediaries. As to Article 7(d), the Delegation noted that there was a broad definition of educational and research institutions, and sought clarification on how that provision would work. As to Article 7(e), it asked how it would be determined that a work would be orphaned, for example, whether there would be a search requirement. The same question applied for Article 8(e) which also permitted making copies of orphan works. As to Article 14(a), the Delegation wondered how any relationship with trusted intermediaries might be affected by that provision. The Delegation understood that the provisions did not apply retroactively but if, for instance, there was an entity providing services to eligible persons, how would that relationship be affected by that provision. Finally, the Delegation said that it would be willing to provide a copy in writing of the above questions.
158. The Delegation of Canada supported the questions and concerns raised about flexibility by the Delegation of the European Union and others, particularly with regard to the three-step test. Article 5 seemed to be in contradiction with Article 2 regarding the necessary flexibility in national laws, bearing in mind the difference in legal traditions. The Delegation looked forward to analyzing in detail the new version of the African Group proposal as announced by the Delegation of Senegal.
159. The Delegation of Kenya reiterated the position of the Delegations of Angola and Senegal. Over the last weekend the African Group had spent time working on the text of its initial proposal. It begged for other delegations' indulgence to wait until the final document could be presented and opened the debate.
160. The Chair noted that it was a special situation. There was a forthcoming revised proposal and delegations were posing questions on the initial text that was meant to change.
161. The Delegation of Nigeria echoed the statements of the Delegations of Angola, Senegal and Kenya on the state of the African Group proposal. Article 2 had been modified in a radical manner and would not necessarily run against the spirit of Article 20 of the Berne Convention. The aim of Article 13 was not to make rightholders lose control of the use of the technical measures of protection, but rather to make it possible for certain beneficiaries to use effectively the exceptions. The new revised text by the African Group would expressly include moral rights. As to the question on contracts, the proposal sought avoiding the institution of

contract provisions that subverted the flexibilities provided to the beneficiaries. There were several definitions, such as 'orphan works' or 'copyright', which had been eliminated or modified in the revised version. Moreover, Articles 7 and 8 would be subject to revision, particularly in relation to the new definitions, such as orphan works. Article 14 aimed at not providing by default a window through which the exceptions and limitations could be emptied. Finally, the Delegation saw no immediate contradiction between Articles 5 and 2. The whole essence of the proposal by the African Group was to put across those key areas where exceptions and limitations should benefit users and establish a minimum to guide all countries in determining what to provide in their national laws.

162. The Delegation of Angola, on behalf of the African Group, stated that the previous questions asked by other delegations showed their interest in the draft presented by the African Group and recognized a problem for which a solution needed to be found. The African Group would certainly take into account all questions and would provide an answer to them.
163. The Chair suggested that delegations collect the questions in writing for the African Group, in order to enable it to provide the relevant replies. He invited the Delegation of the United States of America to present its proposal.
164. The Delegation of the United States of America reintroduced its proposal for a consensus instrument, initially presented during the previous session of the Committee. Its purpose was to establish clear and definitive legal norms for the cross border sharing of copies of published works. It consisted of two articles, one on importation and the other on exportation, which made an important distinction among types of special format materials. As to physical Braille copies, the instrument provided that if a country had a national exception for reproduction and distribution of such copies, the country should allow them to be imported and exported fairly. As to audio books and other electronic formats, the instrument provided that if a country had a national exception for the reproduction and distribution of such copies, the country should allow those copies to be imported from and exported to trusted intermediaries in other countries. Trusted Intermediaries were those institutions that were dedicated to serving the needs of the visually impaired. The instrument also provided a set of definitions to guide interpretation of importation and exportation rules. There was also a broad definition of persons with print disabilities which encompassed blind, visually impaired and persons with certain physical disabilities that impaired and prevented the use of standard print materials. There were also definitions for special format materials and trusted Intermediaries.
165. The Delegation of Ecuador asked the Delegations of the European Union and the United States of America how their proposals could solve the problem of the availability of works on international level, if there was a lack of harmonization of limitations and exceptions for the visually impaired. It also asked what kind of prospects the concept of trusted intermediaries in developing countries would have. The Delegation had the impression that rather than optimizing resources or optimizing the use of existing bodies, the role of the trusted intermediaries would actually do the opposite. That was to say, it would restrict the capacity of the very few entities which already existed in developing countries and worked in the relevant area, obliging them to meet the requirements established to become a trusted intermediary.

166. The Delegation of the United States of America made two preliminary points. Firstly, it recalled that it had submitted a background paper and frequently-asked questions as an information document during the 20th session of the SCCR. It invited delegates to have a look at that document as an extensive explanation and response to many of the questions already asked. Secondly, it invited delegations to send their questions in writing so as to have the opportunity to provide more extensive responses. With respect to the two questions raised by the Delegation of Ecuador, it recalled that the purpose of the instrument was to address one problem that had been identified as a very immediate problem in the area of the availability of accessible works, namely the cross-border transfer issue. The Delegation did not suggest that the instrument solved all the problems, as the intention was to continue discussions on the issue of accessible works. As to the harmonization of national exceptions, it was not a topic directly addressed in the consensus instrument as it was understood that the proposal would work with existing limitations and exceptions. With respect to physical Braille works, there could be some transfer even if there was no national exception or limitation in a receiving country. The Delegation supported having exceptions and limitations and was eager to participate in additional future work of the SCCR regarding their harmonization to the extent that was possible, as well as encouraging the development of exceptions and limitations on that specific topic in countries that did not have them. With respect to the role of trusted Intermediaries in developing countries, the proposal did not restrict the activities of existing entities, and the question of which entities were permitted to be qualified as such was left to national law.
167. The Delegation of Angola, on behalf of the African Group, asked about the difference between the proposals of the United States of America and the European Union as well as their elements of convergence. It also asked whether the second and future steps mentioned by the Delegation of the United States of America included the possibility of having a binding instrument.
168. The Delegation of the United States of America answered that the idea behind the consensus instrument was to start with something that was not binding, and then perhaps move to some kind of binding instrument that could be adopted by the WIPO General Assemblies as a binding interpretation of international norms in the area of availability of accessible works under the Berne Convention. That binding interpretation could have a more immediate effect than a treaty, which would become binding only after finalization of drafting, signature, ratification and entry into force. The Delegation did not wish to get into a detailed analysis of a comparison between its proposal and the European Union proposal. One difference was that that the European proposal included specific reference to national exceptions, which did not mean that the United States opposed the introduction of those exceptions. The philosophy in introducing the consensus instrument was really to have a quick measure that could be adopted to facilitate the cross-border transfer of works in accessible formats.
169. The Delegation of the European Union asked whether the United States proposal referred only to Braille books or to physical files of Braille books. It also asked whether the proposal referred to physical importation and exportation or included the transfer of files in electronic form.
170. The Delegation of the United States of America clarified that its proposal referred to physical Braille copies, not to digital files. Articles 2 and 3 of the consensus instrument referred to the physical Braille format copies that could be provided

under more liberal terms than the exportation and importation of other types of specialized format works. The reason behind that differentiation was the concerns related to possible piracy of digitized versions of works. With respect to export and import, it was contemplated that the proposal addressed the transfer of digital files as well as the transfer of physical works.

171. The Delegation of Senegal asked why the proposal of the United States of America did not make any reference to the treaties on related rights, the three-step test, orphan works and the nature of the instrument. It also asked about the framework of the responsibilities of the trusted intermediaries and the lack of consideration of technical measures. As to the latter, the Delegation asked whether the United States would entertain the idea of creating a mechanism that might enable the beneficiaries of limitations and exceptions to overcome the obstacles of access to works caused by the technical measures.
172. The Delegation of the United States of America answered that it would take into consideration the reference to treaties on related rights in its proposal, although its national law did not make any distinction between copyright and related rights. With respect to the three-step test, there was a reference to that in the preamble of the consensus instrument. The Delegation emphasized the importance, vitality and flexibility of the three-step test for limitations and exceptions and certainly the exceptions and limitations propounded in the proposal should be consistent with it. With respect to trusted intermediaries, particularly the need to develop trusted intermediaries in Africa and other developing nations, the Delegation noted that while its proposal focused on working with national systems as they existed, the United States would also support the idea of assisting the development of trusted intermediaries. With respect to technical measures, there was no specific reference to them in the proposal as it was contemplated that national systems and legislation, including provisions on those measures, would continue to apply. The Delegation noted that technical measures of protection would be very helpful in facilitating the delivery of accessible works to the print disabled. The United States Copyright Act, namely in Section 1201, included some moderation with respect to technical measures applicable to accessible works. As to orphan works, the Delegation considered that it was a subject that merited further consideration. In the United States it was possible to make copies of accessible copies of what might end up being orphan works. Finally, as to the question on the nature of the instrument, whether it was a joint recommendation or a treaty, the lack of specification was deliberate and by design. The proposal was called a consensus instrument because it had elements that could be used in different of types of instruments, whether a joint recommendation, a binding interpretation of the Berne Convention, or even a protocol or a treaty.
173. The Delegation of Mexico, on behalf of GRULAC, noted that the discussion demonstrated that some maturity had been reached in the issues under exceptions and limitations for people with disabilities. There was a possibility to move towards an instrument on providing access to people with visual impairment and to maintain the other limitations and exceptions on the agenda for substantial discussion. The Delegation welcomed the openness of the Delegation of the United States to consider a future protocol or treaty, and asked what arguments prevented it from moving immediately as a first step to a treaty. It also sought clarification about the notion and functions of trusted intermediaries.
174. The Delegation of the United States of America was very desirous of seeing equal openness in other countries regarding the types of instruments to be considered by

the Committee. The Delegation recalled that there was no international treaty for broadcasters or audiovisual performers, however, there were two proposals to establish international limitations and exceptions. The interpretation of the existing treaties was the first step on the way to establishing and clarifying the appropriate international legal norms for copyright exceptions and limitations. Moreover, the Delegation considered that the SCCR should prove its ability to shape reasonable international legal norms and not only engage in a normative exercise. The current process should move gradually and incrementally but definitively in a way that built confidence for all parties.

175. The Delegation of Canada sought clarification about whether the consensus instrument submitted by the United States of America would apparently not allow the direct use of special format materials by different disabled persons other than Braille material.
176. The Delegation of the United States of America would take the previous remark into consideration. There might be situations where it was possible.
177. The Delegation of Venezuela considered that the United States of America's proposal was full of adjectives that could lead to difficulties in cultural understanding. It questioned how the concept of trusted intermediaries was compatible with the progression of human rights. It asked how that proposal could solve the problem of the lack of exceptions for the disabled in national laws.
178. The Delegation of the United States of America believed that, as a matter of principle, the variety of national exceptions for the benefit of persons with print disabilities in the 57 countries that had those exceptions showed that crafting an international standard would be an ideal situation. That was why the consensus instrument proposed to initially address the importation and exportation issues immediately. A large number of countries did not have national exceptions in their law for the benefit of persons with print disabilities, but they could provide varied and interesting export and import templates. The United States was open to the development of an international legal norm on what the content of the national exception should be, but it was a more difficult project and involved more variety of legal forms already in use. As to the remarks of the Delegation of Venezuela regarding the use of adjectives, it noted that the United States never did an adjective count on its proposal or any other proposal on the table.
179. The Chair asked whether the Delegations of Brazil, Ecuador and Paraguay would be ready to reintroduce their proposal.
180. The Delegation of Ecuador noted that their proposal was probably the best known of the four proposals on the table. The sponsors believed that it was necessary to achieve a consensus on the work program during the current session. Local limitations were inadequate to improve the situation for persons with visual disability as there was no balance in the treatment at an international level between the private interests of rightholders and the interests of the public.
181. The Delegation of the European Union asked what was meant in Article 1 of the proposal regarding minimum flexibilities in copyright laws, namely whether it included exceptions and/or compulsory licenses. It also asked how contracting parties would be obliged to introduce those flexibilities, and how they would relate to the optional character of exceptions as contained in the Berne Convention, the WCT, the WPPT, the Rome Convention and the TRIPS Agreement. It also asked

what the terms 'information' and 'communication' meant in relation to copyrighted works. The Delegation asked why there was a difference in the terms used in Article 1 and 2, namely the visually impaired or otherwise disabled. It also noted that the introductory note of 25 May 2009 and the background paper contained some ambiguities and conflicting provisions regarding the beneficiaries of the desired exceptions. Furthermore, on Article 3, it asked why the formulation was different from the one contained in Article 1 of the WCT which stated that nothing in the treaty shall derogate from existing obligations that contracting parties had to each other under the Berne Convention. Article 4 seemed to provide for a mandatory exception for visually impaired persons as mentioned in the commentary on Article 1. The Delegation wondered how that related to the Berne Convention, the WCT, the WPPT, the Rome Convention and the TRIPS Agreement. As to Article 4, it wondered whether there was a deliberate omission of the three-step test, which could be in contradiction with the Berne Convention regarding the creation of special agreements. The Delegation considered that the relevant acts and rights to which an exception was provided should be clearly mentioned. It noted that there was no reference to an exception to the reproduction right or making available right, or other rights in copyright treaties. As Article 4 seemed to provide for a mandatory exception, the Delegation asked what was the relationship of that provision to the Berne Convention, the WCT, the WPPT, the Rome Convention and the TRIPS Agreement. As to Article 4(c), the Delegation queried how conferring commercial rental rights on for-profit entities based on an exception for the benefit of visually impaired persons would relate to the provisions of Article 7 of WCT, Article 9 of WPPT and Article 11 of the TRIPS Agreement; and, furthermore, whether adequate safeguards against possible non-authorized use by for profit entities had been foreseen. The word "any" in that article seemed very broad and implied that the conditions were alternative and not cumulative. As to Article 6, the Delegation wondered whether that provision was balanced taking in to account Article 11 of the WCT, inter alia, as it gave the right to individual persons to circumvent technical protection measures. On Article 8, the Delegation asked whether that provision confirmed what Article 4 already stated, namely that there should be an exception covering the relevant acts in both the exporting country and the importing country. It wondered whether the words "any version" also included non-tangible versions. If that was the case, the word import and export, as understood by the European Union Delegation, related to the distribution of tangible copies, might not be appropriate. On Article 12 on orphan works, the Delegation had proposed to tackle the subject in the SCCR with appropriate consideration. Simply providing an exception for orphan works without having studied and discussed the issues more in depth did not seem appropriate at that stage.

182. The Delegation of Ecuador answered that, as to Article 1, minimum flexibilities did not only include exceptions and limitations but also compulsory licensing; for instance Article 11 referred to the case of remuneration when there was a profit making body involved. It said that the wording could be improved in order to calm the fears of the European Union Delegation. Mandatory limitations and exceptions referred to the minimum that countries, which signed up to the treaty, should have within their internal legislation. With regard to Article 2, the proposal was meant to benefit also people with other disabilities as there should not be any discrimination in that area. With regard to Article 3, the sponsors of the proposal believed that it was consistent with the other international treaties. There was a list of reasons that could be given to defend that formula. With regard to the three-step test, the question was whether that test was used for all limitations and exceptions or only for those under the Berne Convention. It cited a study developed by the

Max Planck Institute which recognized that the test had not been applied equitably, and it had been interpreted very restrictively. The exceptions proposed for the visually impaired met the three requirements of the test. With regard to the technological measures of protection in Article 6, the intention of the provision was to avoid some technical means preventing the work being available under the exception. As to Article 8, in relation with Article 4, it noted that the idea of the treaty was that limitations and exceptions should be mandatory and signatory countries should change their domestic laws to include similar import and export rules. With regard to orphan works, the Delegation recognized the complexity of the issue which required a specialized treatment, as there was no intention to prejudice the rightholders of orphan works unjustifiably or unreasonably.

183. The Delegation of Mexico, on behalf of GRULAC, echoed the statement of the Delegation of Ecuador. It added that the object of the draft treaty was to try to give legal certainty. As to orphan works, it proposed a treatment identical to anonymous works. Anonymous works could be used by anyone until the rightholder appeared. When the rightholder appeared then the exclusive right to authorize or prohibit use also appeared, as well as the right to obtain a payment.
184. The Delegation of Brazil supported the statements made by the Delegations of Ecuador and Mexico. It recalled that the European Union Directives established compulsory exceptions for temporary reproduction of works and for computer programs with regard to reverse engineering. It also recalled that the proposal was only a starting point, and the co-sponsors were open to any negotiation and discussion.
185. The Delegation of France, speaking on behalf of Group B, informed that a proposal by Group B for a decision by the Committee on a work program for limitations and exceptions had been made available. It had been drafted using the African Group proposal as a basis, including the same format of text and annex. It highlighted the strong common areas of a detailed work program, with priority given to the visually impaired and without prejudice regarding the instrument or instruments to be developed. The main difference was that Group B did not envisage any inter-sessional work, as the work could be carried out by the Committee itself in bilateral meetings among regional groups.
186. The Chair invited the Group coordinators and other regional delegates to meet separately. A plenary meeting would follow to report on the informal consultations held.

Statements of Non-Governmental Organizations

187. The Chair noted that non-governmental organizations agreed to produce a compilation of interventions, in order to provide Member States a handy tool for reference. Interested Member States were invited to pose to the proponents their queries by December 15, 2010 to the WIPO copyright e-mail address: copyright.mail@wipo.int, indicating as subject line of the emails the wording "SCCR questions". The Chair gave the floor to NGOs, reminding them that their interventions should not exceed two minutes.
188. The representative of the International Federation of Reproduction Rights Organizations (IFFRO) said that IFFRO was a strong supporter of providing access to copyright works to people with reading impairments. The WIPO Stakeholders'

Platform could have been seen as a solution for the problem and, in particular, for allowing cross-border exchange of books already adapted into accessible formats. IFFRO acknowledged the indispensable efforts of the Platform in creating capacity in the system of making and exchanging copies in alternative form. The representative supported the principle underlying the proposals of the Delegations of the European Union and of the United States of America to achieve an enabling legal framework. IFFRO believed that the possibility to create an exception or limitation in favor of people with reading impairments in national legislation already existed for Members of the Berne Convention, but it did not have objections in having a WIPO joint statement to clarify the issue.

189. The representative of the British Copyright Council (BCC) welcomed the study on the social and economic effects of the proposed treaty on the protection of broadcasting organizations, that highlighted the growing list of ways in which signals could be used without authorization and indicated how new markets and opportunities were being reopened for signals. Mandatory exceptions might help provide future certainty but, on the other hand, mandatory rules could remove flexibility to accommodate local national needs and development of new opportunities for copyright owners to authorize the use of their work. That was a greater concern when the debate over future exceptions and limitations expanded beyond the needs of identified groups in society, and addressed wider concepts such as education and research. The concept of a more detailed list of optional rather than mandatory exceptions and limitations, instead of the three-step test, had provided a helpful framework within the European Union. Rather than any new treaty reducing the flexibilities provided under existing treaties, the BCC hoped that Member States could achieve flexibility for local needs under national legislation. Finally the BCC hoped the work of the Committee would lead to the adoption of a treaty to provide international recognition for the rights of audiovisual performers.
190. The representative of the Motion Picture Association (MPA) supported a balanced and workable system of copyright including not only exclusive rights but also exceptions and limitations. Any movement forward on the matter must respect the international copyright framework including the three-step test, which already provided ample flexibility to introduce a wide range of exceptions. MPA believed that the United States and European Union proposals formed the best basis for possible solutions. On the issue of the legal protection of audiovisual performers, the MPA was committed to achieve balanced protection for performers at the international level. To that end it had worked tirelessly with organizers representing performers to bridge a gap that dated back to 2000. Regarding the issue of the 19 provisionally agreed articles, MPA believed that the process could only go forward on the basis of those provisions which were still relevant at that time. They should have not been reopened for negotiation. MPA also reiterated its support for movement on the broadcasting treaty.
191. The representative of the Library Copyright Alliance (LCA) urged Member States to bring the copyright system into the 21st century for the benefit of all members of society, including the visually impaired. Both the treaty proposal of Brazil, Ecuador, Mexico and Paraguay and the United States proposal for cross border distribution offered good alternatives. A diplomatic conference on the matter should be convened in 2012. The issue of exceptions and limitations for libraries and archives and education should proceed in sequence. A core set of library limitations and exceptions was needed to sustain a global information society. Private licensing of information was not an adequate solution because it did not

encompass all public policy considerations. Library organizations had identified areas where a global solution in the form of limitations and exceptions was needed: preservation and library supply; use of orphan works; cross border exchange of information; validity of statutory limitations and exceptions in private contracts; and circumvention of technological measures that prevented certain library activities.

192. The representative of the International Federation of Library Associations and Institutions (IFLA) appreciated the focus of the SCCR on exceptions and limitations for the visually impaired, libraries and archives and education. Barriers such as contracts and technological protection measures sometimes made it impossible to use copyright exceptions in some countries, where legislation already would have allowed uses in support of the print disabled and students and educators, as well as other potential beneficiaries. IFLA urged Member States to support a work plan to enable the treaty for visually impaired and other reading disabled people without delay, and also to provide a clear timetable for discussion of the other issues, notably exceptions and limitations for libraries and archives. At the previous session of the SCCR, IFLA welcomed the African Group proposal with regard to issues related to library and archives. Based on its experience IFLA believed that the proposed treaty for the visually impaired was extremely well advanced.
193. The representative of the International Federation of Actors (FIA), also speaking on behalf of the International Federation of Musicians (FIM), was very encouraged by the high level of support expressed by Member States for a possible treaty protecting audiovisual performances. In a digital world where productions might be seen by anyone, anywhere, and at any time on multiple distribution platforms, it was increasingly difficult to protect the rights of performers in audiovisual productions. Following the conclusion of the WPPT, some domestic legislation provided performers with rights not previously available to them, but audiovisual performances were still not protected in many countries. The representative respectfully urged the SCCR to establish a concrete work plan and timetable with dates towards a possible treaty protecting audiovisual performances.
194. The representative of the International Group of Scientific, Technical and Medical Publishers (STM) was encouraged by the goodwill of all delegations. STM was committed to find a concrete and fast solution for improving access to visually impaired persons. The recent meeting of the WIPO Stakeholders' Platform could be considered a major milestone and a turning point in that field. STM urged all Delegations to support the WIPO Stakeholders' Platform and its European parallel process, to provide practical, concrete and swift solutions. A major component of that support was to maintain an open mind during deliberations about the enabling legal framework that encouraged the two projects on which the stakeholders were working. In addition, copyright licensing and digital rights management (DRM) were frequently mischaracterized as barriers and obstacles that locked up information, but there were meaningful examples proving the opposite.
195. The representative of the Electronic Information for Libraries (eIFL.net) urged the SCCR to agree on a work plan that prioritized a solution for the visually impaired (VIPs), and progressed in the field of library and archives. Various challenges were faced by libraries in Africa in their endeavor to get access to knowledge, including the relationship between contracts and exceptions. Contract terms governing access and use of the e-resources often undermined copyright exceptions and limited the uses of the material which were allowed in national law. Precedents of international solutions for safeguarding exceptions in contracts

already existed in the European copyright system, namely the Directives on computer programs and on databases. Another challenge was related to libraries and archives responsible for the preservation of cultural heritage, that faced the lack of norms for copying for preservation purposes in more than half of countries of the world. It was imperative that Africa's rich and diverse culture could be preserved. In addition, EIFL reiterated its support for a work plan that enabled the VIP treaty to move ahead without delay, and that allowed for a phased introduction of other issues raised by the African Group and other delegations, each on its own merit and state of readiness.

196. The representative of the International Federation of Film Producers Associations (FIAPF) welcomed the substantive discussions on proposals regarding exceptions and limitations and specifically the discussion regarding access to special format print material by visually impaired persons. The film industry, treating access by the disabled very seriously, considered that experiences and practices in providing access were vitally important in that field. FIAPF believed that any binding international instrument would not create greater access. The need for sustainable long term policies backed up by resources and practicable solutions which ensured access and also protected legitimate interests of the authors and publishers was the crucial point. In that context, FIAPF was very supportive of the job performed by the WIPO Stakeholders' Platform and welcomed the recent announcement of the TIGAR pilot project. FIAPF was concerned that any attempt towards harmonization might conflict with the optional character of exceptions and limitations as enshrined in the Berne Convention, the robustness of which had been aptly demonstrated. Regarding the protection of audiovisual performances, the representative thanked the Mexican and Indian Delegations for their proposals towards a viable compromise in the area. FIAPF supported the position heard from many Member States that the pre-agreement of 2000 constituted a solid and healthy basis to move forward. Finally, FIAPF also remained supportive of progress in the field of the rights of broadcasting organizations.
197. The representative of the Electronic Frontier Foundation (EFF) remained concerned by the recent discussion on the proposed broadcasting treaty, because it was not limited to signal protection as mandated by the General Assembly and included broadcasters' IP rights over retransmissions after fixation of signals. Protection of signals did not require the creation of IP rights. Granting broadcasters and cablecasters IP rights, independent of copyright, would allow broadcasters to restrict access to public domain works, add complexity to copyright clearance regimes for creators of podcasts and documentary films, and would interfere with the consumers' ability to make home recordings permitted under national copyright laws. It would also harm competition and innovation by allowing broadcasters and cablecasters to control the types of devices that could receive transmissions, and would create new liability risks for intermediaries retransmitting information on the Internet. EFF welcomed the study on the socioeconomic effect of the treaty showing that the treaty was likely to disadvantage the public by reducing content currently available, and by increasing costs for acquisition of material. The Study had failed to consider the impact on citizens, and on competition and innovation in the information technology sector. On exceptions and limitations, EFF welcomed Member States' support for adoption of a concrete work plan towards an international instrument taking into account the four submitted proposals. It supported the VIP treaty to secure access to accessible works for the visually impaired as the first part of the work plan. EFF applauded efforts to increase accessible materials, but neither a voluntary licensing regime nor a mechanism that covered only one of those elements would change the

situation. There was need for work towards an international instrument on exceptions and limitations that facilitated the efficient operation of global libraries and archives, but also the right to education was a fundamental human right enshrined in Article 26 of the United Nations (UN) Declaration of Human Rights and Article 24 of the UN Convention for the Rights of Persons with Disabilities, and a core objective of the Millennium Development Goals. As the five detailed studies commissioned by WIPO demonstrated, it was possible to create appropriately tailored exceptions and limitations that met the three-step test criteria and provided adequate remuneration for the publishing industry, but many developing countries did not have them in place. The Internet and new digitization technologies offered new possibilities for distance education for students across the world, but they would need global copyright exceptions and limitations to facilitate cross border transfers of digital information, and foster innovation and transformative uses of technology for education.

198. The representative of Copyright Research Information Centre (CRIC) stated that despite the fact that WIPO had established the WCT and WPPT in 1996, the international community had not updated the protection for audiovisual performances and broadcasting organizations. During 14 years of negotiations, piracy had done huge damage to broadcasters and audiovisual performers. Broadcasting was a very important basic social media, without which ordinary people could not enjoy the information at ease and people would suffer from a tremendous cultural and technical divide. In relation to the protection of audiovisual performances, CRIC believed the 19 substantive articles agreed upon at the Diplomatic Conference in 2000 still formed a good basis for discussion. As to the broadcasters' treaty, CRIC reminded that the SCCR had the mandate of the 2007 General Assembly, and should have accelerated its work on those items.
199. The representative of the International Video Federation (IVF) welcomed the progress on the protection of audiovisual performances, and hoped the SCCR decided to maintain the 19 articles provisionally agreed in 2000. On the subject of exceptions and limitations, IVF supported the United States and the EU proposals in response to the urgent need to promote access to copyrighted works by print disabled persons. It also welcomed a work program on exceptions and limitations based on a global and inclusive approach for solutions that were fully consistent with the existing international copyright framework including the three-step test. Regional and international cooperation, contract-based solutions including preferential pricing and public-private partnerships, involvement of local stakeholders, and innovative technological and licensing solutions could be the most effective way forward. The relation between exceptions and limitations and technical protection measures (TPMs) was also an important concern. Innovative solutions offered real opportunities to enhance access to knowledge and access to the global online marketplace, and those were usually based on contracts and TPMs.
200. The representative of the Latin American Union of the Blind (ULAC) supported a binding instrument to solve the problems of the visually impaired in accessing broadcasted material and printed material. The Stakeholders' Platform had done some work but could not successfully solve the problems faced by certain developing countries, including in Latin America. The objective of a specific exception for VIPs was to promote investment in production rather than in the management of licenses and other bureaucratic issues, related to a trusted intermediary model which ULAC did not support. The model of trusted intermediaries had two major problems, namely, that it took resources away from

production and could lead to other dangerous separation between major enterprises that would be in a position to engage in exchange internationally, on the one hand, and smaller organizations which would not be in a position to import and export material, on the other. It was supportive of establishing a work plan to achieve a binding solution on the matter. In Argentina, there was a system in place to ensure that piracy in terms of access to material for visually impaired persons could be avoided and other Latin American countries had taken the same steps. During a meeting held in Argentina on the matter, it was clarified that having a specific exception would provide greater security for both publishers and users.

201. The representative of the Discapacitados Visuales IAP stated that in Mexico there was a disabled population unable to finish the basic education because of the lack of material for study in Braille. Books in Braille and audio material enabling young people and children to continue with their education were desperately needed. The initiatives for a joint recommendation or a consensus instrument needed to oblige Member States to allow organizations to provide the necessary access to VIPs. The identification of trusted intermediaries would not be easy or effective for the solution of the problem. In Mexico alone, there were 200 different organizations working with the blind. The representative felt that a pilot project establishing a Stakeholders Platform could help but it would not resolve the basic problem. A binding instrument facilitating access to information was needed; although it was supportive of a broader agenda taking into account different disabilities, no delay to the negotiations on VIPs should occur as a result.
202. The representative of the Organization of Blind Persons of Brazil (ONCB) stressed the hard situation of lack of information and culture and the book famine that characterized the lives of print disabled in Brazil. The Convention on the Rights of Persons with Disabilities granted the right of access to information and to culture, which could have been effective when another national binding instrument would have provided that blind people could have access to reading material and culture. Initiatives like the platform developed by interested parties was a useful alternative for certain purposes, but it was not sufficient to solve the problem. WIPO should work hard to regulate that issue. In some countries there were already a large number of books available in format for the blind, but it was impossible to export them to other less developed countries, because of limits on the transport of the works from one country to another. An international treaty could solve that problem granting the respect of a fundamental right such as access to information and culture.
203. The representative of Knowledge Ecology International (KEI) opposed the work on a new broadcasting treaty but supported work on a new audiovisual performances treaty. KEI also supported the work of the SCCR on possible new norms for copyright limitations and exceptions particularly as regards access to knowledge and uses of new technologies. Regarding persons with disabilities, the well-established rationale for a global norm was a need for sufficient implementation and harmonization of exceptions to facilitate the sharing of accessible works across borders. The focus of the SCCR would be the crucial factor to advance work on a treaty for persons with disabilities. The SCCR should hold meetings that solely deal with the task of developing consensus on the text of such a treaty. KEI called upon the Obama Administration to decide if a treaty was needed as well as to consistently provide leadership in Group B. WIPO Member States could sign a treaty on cross-border sharing of works by 2012 if Group B would stop blocking progress on the text. KEI suggested that the SCCR make an assessment of the Berne Convention in relation to education, to identify the

rationale for norm-setting in the area of exceptions and consider the evidence that could assist the Committee in its work.

204. The representative of the TransAtlantic Consumer Dialogue (TACD) requested the SCCR to focus attention on a schedule of work on copyright limitations and exceptions. In that regard, it was essential to schedule technical meetings focused on particular topics such as access for persons with disabilities, libraries, archives, education, innovation services, orphan works and other topics. Given its level of maturity, TACD suggested that work on a treaty for the visually impaired receive immediate attention, and that the SCCR schedule at least two technical meetings to examine the text of the different proposals on the topic. In addition, the SCCR should consider how to address the inadequacy of exceptions for education, libraries and archives. Many Member States had recognized that the Appendix to the Berne Convention had failed to meet its objectives, and new solutions could be found to further the objectives set in 1971. Finally, TACD endorsed statements made by other experts in all delegations and civil society representatives stating that the time for the treaty for the blind and visually impaired had arrived.
205. The representative of the Asia-Pacific Broadcasting Union (ABU) recognized that the WIPO Secretariat had submitted to the SCCR the results of the third part of a study on unauthorized use of signals and an analytical document summarizing the three parts of the study. In addition, the Secretariat had organized dedicated regional meetings in Mexico City, New Delhi and Abuja. The proposed treaty would benefit the economies and increase the cultural market of home nations of broadcasters, cable and satellite operators who could obtain additional revenue of exploitation of rights. Moreover, the reports prepared in the three regional meetings showed strong support to adopt the proposed treaty. At the meeting in Mexico, the importance of granting protection to broadcasting organizations against signal piracy was stressed, as well as the importance of discussing national treatment together with object of protection. The Delegates at the New Delhi meeting confirmed the need to agree upon objectives, specific scope, and object of protection for broadcasting organizations. The conclusions of the meeting in Abuja urged the SCCR to set the time frame on each agenda item. They also urged the SCCR to work towards the development of a new text of the treaty to enable the 2011 General Assembly to decide on the convening of a diplomatic conference. ABU believed that the substantial information facilitated by the studies and the regional meetings formed a strong basis to move the discussions on the broadcaster's treaty to a diplomatic conference.
206. The representative of the American Council of the Blind (ACB) supported the World Blind Union's call for an international treaty to extend copyright exceptions for people with print disabilities. ACB reminded that when blind people wanted to read a particular book, the search for it in accessible formats could be disappointing. ACB hoped to see a timely and effective solution.
207. The representative of the Centre for Internet and Society (CIS) noted the collective intent shown by the high number of proposals to find a solution to the problem of unavailability of books in accessible formats for persons with print disabilities. CIS reminded that NGOs representing disability groups from both developed and developing countries had always asked for a legally binding international instrument as the only effective solution at a global level. CIS believed that, as a first step, Member States should sign a treaty harmonizing exceptions for persons with print disabilities. Exceptions and limitations were important as they promoted access to knowledge and encourage creativity and the overall development of

humankind. WIPO should and could play a crucial role in the development of international IP law in a manner which facilitated greater access to knowledge, especially in the digital context. CIS saw some merit in having separate sessions to discuss each issue in order to facilitate more focused deliberations in an expeditious manner, and urged Member States to take up those issues without delay on the basis of the maturity.

208. The representative of the European Broadcasting Union (EBU) quoted: "The reasonable man adapts to the world. The unreasonable man wants the world adapting to him. But it is thanks to the unreasonable man that the world changes." The broadcasting landscape was changing, as shown by the three helpful WIPO studies and the three regional seminars on the matter. EBU urged the SCCR to take major steps towards a decision on the protection of broadcasting organizations. EBU shared the view of the Director General of WIPO that a treaty of broadcasting was going to happen at the present time or never. EBU thanked the Delegations of Mexico and Japan for proposing the creation of a technical working group. In order to facilitate the discussion in such a working group, broadcasters were also ready to produce new treaty text provisions.
209. The representative of the North American Broadcasters Association (NABA) stated that a technical working group could review the existing work and recommended the next steps for updating the proposals encompassed in document SCCR/15/2. It should be taken into account that a draft proposal, which was founded on older proposals that went back to the first few years of the last decade, might be revised given the changes in the technological and marketplace environment of broadcasting. The representative of NABA also stated that any proposal should be technologically neutral and should include new media platforms to return to debate on the substance. With respect to the treaty on audiovisual works, NABA supported a treaty based on the existing 19 articles with an added provision addressing the transfer or consolidation of economic rights.
210. The representative of the Canadian Library Association (CLA) expressed his appreciation for the focus of the SCCR on exceptions and limitations, including libraries and archives. He noted that CLA acted as an advocate and worked to promote the Canadian library and information community and the services it provided to society. Also, he supported the suggestions by Member States that the way forward was through the development of a work plan that both recognized the readiness to move ahead towards the VIP treaty without delay and that allowed for the introduction of parallel tracks of discussion about limitations and exceptions for libraries and archives as well as for education.
211. The representative of the National Organization of Spanish Blind Persons (ONCE) made an unambiguous call for a binding instrument that would enable exchange of books in accessible form. That was the only tangible effective way forward. Without exceptions to copyright, ONCE would not be able to produce the thousands of books it made available each year. The geographical permissions for publication of those books were a partial factor for consideration. The existing agreement in Europe was based more on language and culture than on borders. That was the case in Nordic countries and German-speaking countries, for example. The Latin American NGO network, with more than 180 organizations, would fall outside of a legal framework based on the notion of trusted intermediary as defined so far. A solution based on trusted intermediaries would only enable to work among organizations and would not provide a rapid solution to exchange and produce accessible works. A fair piece of legislation was therefore indispensable.

212. The representative of the National Association of Commercial Broadcasters in Japan (NAB-Japan) noted that since WIPO started working on the establishment of a global treaty in 1997, technology had developed with a remarkable speed and piracy had become a common practice. Broadcasting was facing crucial challenges. Technological development brought convenience in many good ways but it also facilitated infringements. Leaving the situation as it was would mean that consequences could be faced in the near future. The representative proposed that a substantive discussion start again to establish the treaty on broadcasters, together with that on audiovisual performances.
213. The representative of the *Comité national pour la promotion sociale des aveugles et amblyopes* (CNPSAA) stated that there was a need for a binding treaty to enable import and export of accessible works to and from French-speaking countries.
214. The representative of the Computer and Communications Industry Association (CCIA) noted that a fundamental element of action should include the adoption of a work plan with timelines and milestones that led to a binding and effective result. A broader discussion on limitations was necessary and should not wait for other subjects to reach the same level of maturity. It was possible to have strong copyright protection for the hundreds of millions of visually impaired people and to have access to copyrighted works at the same time. With respect to broadcasting, there was no change in the political landscape despite a decade of discussion. Broadcasting should not be allowed to detract from action in favor of the visually impaired or on any other issue.
215. The representative of the Royal National Institute of Blind People (RNIB) addressed the issue of the Stakeholders' Platform and trusted intermediaries. Judging by the complex steps that blind organizations needed to take, it appeared that simplicity and practicality were being sacrificed. The fear of piracy lay behind the term 'trusted intermediary' and its complicated requirements. However, while the digital world presented challenges and opportunities to publishers, those challenges and opportunities would neither grow nor diminish. The representative of RNIB was heartened that all groups in the SCCR agreed that some sort of legal instrument was necessary to address national copyright exceptions for print disabled people and for the international exchange of accessible books. He urged the Committee to agree to a clear practical timetable and roadmap for a WIPO instrument for a treaty on print disabled people.
216. The representative of the International Publishers Association (IPA) expressed its support for national, regional and international initiatives to facilitate the access to works by print disabled persons. Publishers wanted everyone to read their books. Publishers supported national exceptions for the benefit of print disabled and visually impaired persons which should be tailored to the needs of each nation to guarantee the necessary flexibility. Publishers also believed that a conclusion on the debate on international import, export and transfer of digital files was premature because the WCT had not been signed by over half of the Berne Convention constituency, let alone implemented. Moreover, the definition of 'normal exploitation' in the digital environment varied because the business models were constantly changing and some were beginning to emerge. At the present stage, the time was ripe to create trusted intermediary networks.
217. The representative of the National Federation of the Blind (NFB) stated that the ultimate solution to the book famine faced by the blind and visually impaired was

an international treaty or other form of binding international instrument. There had been substantial discussions regarding the effect of the Stakeholders' Platform. Such efforts were laudable steps in the right direction. They were not, however, the solution. A binding international agreement was the only way to ensure that the blind and visually impaired had access to the greatest number of physical works or published works. In fact, such binding international norms would only make the work of the Stakeholder Platform and other efforts easier because all parties would be working from a common understanding and prescribed norms. It was necessary to take action immediately, and a work plan should be developed with the ultimate goal of adopting a binding international instrument. Although the WBU treaty proposal was preferable, other tabled proposals had their merits. All of those should be discussed, and from there the binding international instrument should emerge.

218. The representative of *Corporación Innovarte* commended the Committee for all the efforts to benefit persons with disabilities, libraries and archives but also in relation to the enforcement of copyright. Despite all the work that had been done, a misconception persisted that the three-step test was a sufficient framework, especially for developing countries. After the signature of the Berne Convention, less than 60 countries had incorporated a limitation for the blind. Limitations for the digital world were non-existent in most regions. Developing but also developed countries had different views on the interpretation of the three-step test, and especially so in the digital environment. The issue under consideration and the resulting uncertainty could not be left to stakeholders but rather should be addressed by Governments. The reservations to the concept of a treaty providing mandatory exceptions contradicted national practices as highlighted by the Delegation of Brazil in relation to the EU directives. It was necessary to be constructive in order to achieve a first solution for the blind and other persons with disabilities, who deserved the same quality of protection afforded to copyright owners.
219. The representative of the Association of European Performers' Organizations (AEPO-ARTIS) stated that, with regard to archives, there were questions on the understanding of what an archive was. Those questions included the kind of archives, the treatment of existing recordings, the preservation or use of recordings, the scope of the exception, the use with or without royalties. As to orphan works, it noted that a recording only became an orphan work when somebody chose to record and not to identify the artist, which was an increasing practice. Recordings were being exploited without the name of the artist or performer being listed. As to a treaty on audiovisual performances, performers need to be protected and remunerated for their work. A treaty for performers should not necessarily be equated with granting rights to producers.
220. The representative of the International Council of Archives (ICA) indicated that archives hold huge numbers of works. Each file might contain many documents consisting on film or sound recordings with different copyright status. Archives were essential for the efficient functioning of organizations and had immense evidentiary and cultural value. Archivists were primarily concerned with unpublished materials. Exceptions and limitations to copyright were vitally important to archivists. Any agreement on access to copyrighted works for reading disabled people must take unpublished works into account. The problem of clearing rights in orphan works was a significant one for archivists. Member States should support a work plan to develop a treaty for reading disabled people that clearly also set out a program of work for exceptions and limitations for libraries

and archives and education, so that each issue could be considered on its own merit.

221. The representative of Third World Network (TWN) considered international binding instruments as the most appropriate way to go. Text-based negotiations would make the work of the Committee more efficient. Exceptions and limitations that allowed affordability of copyright material should be the objective of the Committee. Discussions should have a clear development dimension pursuant to the adoption of the WIPO Development Agenda and the commitment of the Organization to its implementation. According to the coordination mechanism and reporting ability approved by the last General Assembly, the SCCR should fulfill its mandate of reporting on its contribution to the implementation.
222. The representative of the World Blind Union (WBU) endorsed the statements made by national and regional members of the WBU earlier in the session. The representative concentrated on two issues. First, the opponents to the treaty proposal portrayed the treaty-making process as slow and ineffective. Instead, they portrayed weak non-binding legal instruments and very complicated stakeholder dialogues as both practical and speedy. The argument about the slowness and impracticability of treaty-making did not stand up to scrutiny. The representative reminded the Committee that the UN Convention on the Rights of Persons with Disabilities had been completely negotiated in less than five years. In the three and a half years it had been available for signature, 148 countries – three quarters of all the nations in the United Nations – had signed it and already 96, that was half the countries in United Nations, had already ratified it. The disability community in the world was confident that its lobbying would achieve quick take-up for a treaty on copyright for the visually impaired. A treaty would enable many VIPs to share hundreds of thousands of books that were really accessible across language groups and across borders; a cumbersome non-binding instrument, such as the ones put forward by the EU and the United States of America, would not achieve the same result. As to the question of the safety of digital files, the WBU was very aware of the fact that piracy was a serious publishing problem in the digital age. WBU and its national organizations took great care over the IP of rightholders, and put into practice considerable measures to prevent abuse of their materials through watermarking and fingerprinting within the DAISY digital audio system. The rightholders had never tabled evidence that copyright exceptions led to piracy. The Stakeholders' Platform was not going to be the whole solution. A work plan was needed to provide a focused opportunity for real progress in looking at all four proposals and finding an appropriate international binding instrument that would bring about an end to the book famine.

OTHER MATTERS

223. The Chair noted that there were no other matters to be discussed under item 8.

CLOSING OF THE SESSION

224. The Chair presented the set of draft conclusions developed by the group coordinators and other delegations representing the various regional groups in informal consultations. He submitted the set of draft conclusions for the consideration of the Committee.

225. The Delegation of Angola, on behalf of the African Group, congratulated the Chair for his great leadership as well as all the regional groups for achieving the successful outcome.
226. The Delegation of India congratulated the Chair for his excellent chairmanship, the Secretariat for the support, and all delegations for their considerable flexibility, patience, and constructive approach to the negotiations.
227. The Delegation of Brazil expressed its satisfaction for the groundbreaking outcome. It reminded the delegations that the Committee would have to discuss how best it could report to the General Assembly on its contribution to the implementation of the Development Agenda, in compliance with the decision taken at the WIPO General Assembly 2010.
228. The Delegation of Mexico, on behalf of GRULAC, noted that it was a new beginning of a work phase for WIPO with more diplomacy, more dialogue and more political will, and less of a trust deficit in the Organization. It thanked the Chair and the Secretariat for the very active role played as well as all delegations from different groups who made concessions to make possible the agreement.
229. The Delegation of Bangladesh, speaking on behalf of the Asian Group, echoed the previous delegations and thanked the Chair, the Secretariat, and each delegation for the cooperation and the constructive spirit demonstrated in reaching an agreed outcome in the Committee.
230. The Delegation of the United States of America referred to the statement of Brazil regarding the Committee on Development and Intellectual Property (CDIP) coordination mechanism. Group B looked forward to the Secretariat presenting the following year a proposal providing the Committee with the coordinated overall approach. Rather than discussing the issue of the Development Agenda separately in all relevant WIPO bodies, the Committee should have a most effective approach, and that would be to discuss that coordination mechanism in the CDIP so as to agree a coordinated approach to its implementation.
231. The Delegation of France, speaking on behalf of Group B, thanked the Chair and the Secretariat for their support, and all delegations for their commitment to achieve a successful outcome.
232. The Delegation of China expressed its appreciation for the flexibility shown by the various delegations to agree on the set of conclusions. It thanked the Chair and the Secretariat for their support.
233. The Delegation of Slovenia, on behalf of the Group of Central European and Baltic States, pointed out that, according to the mandate of the General Assembly, the CDIP would discuss a coordination mechanism in relation to other Committees in its next session that would be held in two weeks. The rationale of such mechanism was clearly not to shift the focus of the SCCR away from discussing substantive issues relating to copyright and related rights. Having an extended SCCR session next time was just a proper proof that the SCCR agenda was already ample enough. The Delegation looked forward to having fruitful discussions at the next CDIP meeting to launch a mechanism which would be flexible, effective, and pragmatic. Finally, it thanked all delegations for their efforts to work in a constructive spirit.

234. The Delegation of Belgium, on behalf of the European Union and its 27 Member States, thanked the Chair for his hard work, commitment, and patience in facilitating the discussions to reach an agreement. It also thanked all delegations for their constructive spirit, and the Secretariat for its support.
235. The Delegation of the United States of America expressed its appreciation to all those who worked with candor, creativity, excellent legal skills, and, at times, interesting discussions of English grammar and word choice. It thanked the Chair for his steady hand in dealing with all the agenda issues, and the Secretariat for its support.
236. The Delegation of Ecuador believed that that day would be remembered as a very important one in the history of WIPO and the SCCR. It gave a special recognition for the World Blind Union's work, which marked the beginning of an exciting work on limitations and exceptions.
237. The Assistant Director General of WIPO commended the coalition of the Asian, African, and GRULAC groups for pooling their resources together to deal with the very difficult issue of limitations and exceptions. He also praised the work of all regional groups that had shown a significant degree of compromise to make a successful result possible. That achievement retrieved the ground lost at the end of the June 2010 SCCR session but, more significantly, it had created a momentum in which the SCCR could really look forward to an exciting future. He also thanked the Chair for its work and all NGOs, particularly the World Blind Union, for their support. He also recognized the valuable inputs and interaction from the broadcasting and audiovisual communities.
238. The Chair thanked all for their efforts, noted that the Standing Committee unanimously had adopted the conclusions set out below and closed the session.

CONCLUSIONS

Protection of Broadcasting Organizations

1. The Committee noted with appreciation, and commented on the third part of the Study on "the Socioeconomic Dimension of the Unauthorized Use of Signals" (document SCCR/21/2) addressing the social and economic effects of the proposed treaty on the protection of broadcasting organizations. It noted, as well, the Analytical Document, prepared by the Secretariat, on the Study on the Socioeconomic Dimension of the Unauthorized Use of Signals, Parts I, II and III (document SCCR/21/4).
2. The Committee took note of the reports presented by the
 - Delegation of India on the Regional Seminar for Asian and Pacific Countries on the Protection of Broadcasting Organizations and Audiovisual Performances, which took place from July 14 to 16 in New Delhi, and
 - Delegation of Nigeria on the Regional Seminar for African Countries on the Protection of Broadcasting Organizations and Audiovisual Performances, which took place from October 18 to 20, 2010 in Abuja.

The reports of pending regional seminars will be presented to the 22nd Session of the Committee, and an analytical document containing the results and outcomes of the regional seminars will be prepared by the Secretariat for consideration of the Committee.

3. The Committee reaffirmed its commitment to continue work, on a signal-based approach, towards developing an international treaty to update the protection of broadcasting and cablecasting organizations in the traditional sense.
4. Members of the Committee are invited to present new proposals on the protection of the broadcasting organizations by March 1, 2011, if possible in treaty language, in addition to the proposals contained in the document SCCR/15/2 rev., to form the basis of the preparation of a new draft treaty.
5. The Secretariat was requested to organize, in Geneva, before the 22nd Session of the SCCR, an informal consultation meeting of Members, involving technical experts, to clarify outstanding technical and technological issues, relevant for the updated protection of the broadcasting organizations in the traditional sense, by following the signal-based approach. The Secretariat will prepare a list of issues based on the 2007 mandate of the General Assembly, with regard to the objectives, specific scope and object of protection. The consultation meeting will report its suggestions to the Committee.
6. The protection of broadcasting organizations will be maintained on the agenda of the 22nd session of the SCCR, where the timetable on future work program should be agreed upon, taking into account any possible new proposals.

Protection of Audiovisual Performances

1. The Committee reaffirmed its commitment to work on developing the international protection of audiovisual performances.
2. The Committee expressed its appreciation to the Secretariat for the regional seminars on the protection of audiovisual performances that took place in New Delhi from July 14 to 16, 2010, and in Abuja from October 18 to 20, 2010 (seminars referred to above under paragraph 2 on broadcasting organizations).

The reports of pending regional seminars will be presented to the 22nd Session of the Committee, and an analytical document containing the results and outcomes of the regional seminars will be prepared by the Secretariat for consideration of the Committee.

3. The Committee thanked the Secretariat for organizing Open-ended Consultations on the Protection of Audiovisual Performances in Geneva on May 28, 2010. The Committee also noted with approval the calls for a faster pace of work towards concluding a treaty for the protection of audiovisual performances, which were expressed by Member States during those Consultations.
4. The Committee considered that the 19 articles provisionally agreed in 2000 were a good basis for advancing the negotiations on the treaty.
5. The Committee noted with appreciation the comments on the draft legal text on the Protection of Audiovisual Performances, submitted by India (document SCCR/21/5) and Mexico (document SCCR/21/6).

6. The Committee invited Member States to submit, by January 31, 2011, written proposals, if possible in treaty language, to address the outstanding issues from the 2000 Diplomatic Conference as well as on any additional or alternative elements for a draft treaty.
7. The Secretariat was invited to organize in Geneva informal open-ended consultations among Members to examine the new proposals, with a view to making recommendations to the next session of the Committee. These recommendations should include a timetable for concluding the negotiations.
8. The protection of audiovisual performances will be maintained on the agenda of the 22nd session of the SCCR.

Limitations and exceptions

Bearing in mind

- *the Development Agenda recommendations;*
- *the agreement reached during the 19th session of the SCCR on December 2009, namely that “all the aspects concerning limitations and exceptions will be maintained on the Agenda of the twentieth session of the SCCR with the aim of establishing a work program concerning those limitations and exceptions, following a global and inclusive approach, and taking into account their equal importance and different level of maturity, while recognizing the need for concurrently addressing all the issues with a view to achieving progress on all of them”;*
- *the international conventions in the field of copyright and related rights, including the SCCR’s authority to make a recommendation to convene a Diplomatic Conference.*

Following a global and inclusive approach, the SCCR agrees to work towards an appropriate international legal instrument or instruments¹ (whether model law, joint recommendation, treaty and/or other forms), taking into account the proposals already tabled or any additional submissions.

The SCCR agrees to the following work program on exceptions and limitations for the two-year period 2011-2012:

1. Recognizing the need to advance the more mature areas, the Committee will undertake text-based work with the objective of reaching agreement on appropriate exceptions and limitations for persons with print disabilities and other reading disabilities. In a similar manner, the Committee will undertake text-based work on appropriate exceptions and limitations for libraries, archives, educational, teaching and research institutions, and persons with other disabilities.
2. The Committee will follow, as set out in this Annex, a clearly defined work program for the two-year period 2011-2012.

¹ This is without prejudice to any other process under negotiation in other WIPO bodies.

The focus of the Committee's work in the two-year period 2011-2012 will build on the existing work carried out by the Committee and use all WIPO working documents on exceptions and limitations as well as any additional relevant working documents which are to constitute the basis of the Committee's work, including:

- the Proposal by Brazil, Chile, Nicaragua and Uruguay for work related to exceptions and limitations (document SCCR/16/2);
- the Proposal by Brazil, Ecuador, Mexico and Paraguay, relating to Limitations and Exceptions: Treaty Proposed by the World Blind Union (WBU) (document SCCR/18/5);
- the Draft Consensus Instrument, submitted by the United States (document SCCR/20/10);
- the Draft WIPO Treaty on Exceptions and Limitations for the Disabled, Educational and Research Institutions, Libraries and Archive Centers, submitted by the African Group (document SCCR/20/11);
- the Draft Joint Recommendation Concerning the Improved Access to Works Protected by Copyright for Persons with a Print Disability, submitted by the European Union (document SCCR/20/12);
- the Updated Report on the Questionnaire on Limitations and Exceptions (document SCCR/21/7).

All four current substantive proposals were presented and Members made initial comments and asked preliminary questions thereon, and were invited to submit in writing questions asked during the meeting.

3. The Committee is requested to submit recommendations to the General Assemblies on exceptions and limitations for persons with print disabilities and other reading disabilities. In a similar manner, the Committee will undertake to submit recommendations to the General Assemblies on limitations and exceptions for libraries, archives, educational, teaching and research institutions, and persons with other disabilities, according to the annexed timetable.
4. The International Bureau is requested to continue to assist the Committee by providing Member States with necessary expertise and funding of the participation of experts, according to the usual formula.

Next Session of the SCCR

The 22nd session of the SCCR will take place from June 15 to 24, 2011.

Annex of the conclusions: Timetable on the SCCR Agenda Item on Limitations and Exceptions

Event	Action
<p>May/June 2011 SCCR/22 session</p>	<p>Three additional working days to the SCCR regular session dedicated to limitations and exceptions for persons with print and other reading disabilities.</p> <p>SCCR regular agenda item on limitations and exceptions: Focus on limitations and exceptions for persons with print and other reading disabilities.</p> <p>Recommendation to the WIPO General Assembly, pursuant to the authority of the SCCR, on limitations and exceptions for persons with print and other reading disabilities.</p>
<p>September 2011 WIPO General Assembly</p>	<p>Decision on any SCCR recommendation</p> <p>Decision on SCCR/22 session recommendation on limitations and exceptions for persons with print and other reading disabilities.</p>
<p>November 2011 SCCR/23 session</p>	<p>Three additional working days to the SCCR regular session dedicated to limitations and exceptions for libraries and archives.</p> <p>SCCR regular agenda item for exceptions and limitations: Focus on limitations and exceptions for libraries and archives.</p>
<p>May/June 2012 SCCR/24 session</p>	<p>Three additional working days to the SCCR regular session dedicated to limitations and exceptions for educational and research institutions and persons with other disabilities.</p> <p>SCCR regular agenda item on limitations and exceptions: Focus on limitations and exceptions for educational, teaching and research institutions and persons with other disabilities.</p> <p>Recommendation to the WIPO General Assembly, pursuant to the authority of the SCCR, on limitations and exceptions for education, teaching and research and for libraries and archives and persons with other disabilities.</p>
<p>September 2012 WIPO General Assembly</p>	<p>Decision on any SCCR recommendation</p> <p>Decision on SCCR/23 and SCCR/24 session recommendations on limitations and exceptions for educational, teaching and research institutions and libraries and archives and persons with other disabilities.</p>

[Annex follows]

ANNEXE/ANNEX

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

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(dans l'ordre alphabétique des noms français des États/
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RÉPUBLIQUE DOMINICAINE/DOMINICAN REPUBLIC

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RÉPUBLIQUE POPULAIRE DÉMOCRATIQUE DE CORÉE/DEMOCRATIC REPUBLIC OF KOREA

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SAINT-SIEGE/HOLY SEE

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SÉNÉGAL/SENEGAL

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SUÈDE/SWEDEN

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TRINITÉ-ET-TOBAGO/TRINIDAD AND TOBAGO

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TUNISIE/TUNISIA

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VENEZUELA

Oswaldo REQUES OLIVEROS, First Secretary, Permanent Mission, Geneva

YÉMEN/YEMEN

Hisham Ali BIN ALI, Deputy Minister, Classification and Intellectual Property Sector,
Ministry of Culture, Sana'a

ZAMBIE/ZAMBIA

Catherine LISHOMWA (Ms.), Minister Counsellor, Permanent Mission, Geneva

ZIMBABWE

Innocent MAWIRE, Senior Law Officer, Ministry of Justice and Legal Affairs, Harare

II. AUTRES MEMBRES/NON-STATE MEMBERS

COMMISSION EUROPÉENNE (UE)²/EUROPEAN COMMISSION (EC)²

Barbara NORCROSS (Ms.), Legal and Policy Affairs Officer, Unit for Copyright,
Directorate-General for Internal Market and Services, European Commission, Brussels

Brian COLIN, Permanent Delegation of the European Union in Geneva, Geneva

III. ORGANISATIONS INTERGOUVERNEMENTALES/
INTERGOVERNMENTAL ORGANIZATIONS

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

Hannu WAGER, Counsellor, Intellectual Property Division, Geneva

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

Petya TOTCHAROVA (Ms.), Legal Officer, Diversity and Cultural Expressions Section,
Culture Sector, Paris

* 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.

SOUTH CENTRE

Viviana MUÑOZ (Ms.), Programme Officer, Innovation and Access to Knowledge Programme (IAKP), Geneva

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

Lyes BELARIBI, Counsellor, *Television Algerienne*, Alger

IV. ORGANISATIONS NON GOUVERNEMENTALES/
NON-GOVERNMENTAL ORGANIZATIONS

American Council of the Blind (ACB)

Melanie BRUNSON (Ms.), Executive Director, Washington D.C

Association des organisations européennes d'artistes interprètes (AEPO-ARTIS)/Association of European Performers' Organizations (AEPO-ARTIS)

Xavier BLANC, Brussels

Association littéraire et artistique internationale (ALAI)/International Literary and Artistic Association (ALAI)

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Association internationale de radiodiffusion (AIR)/International Association of Broadcasting (IAB)

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Canadian Library Association

Victoria OWEN (Ms.), Head Librarian, University of Toronto Scarborough, Canada

Central and Eastern European Copyright Alliance (CEECA)

Mihály FICSOR, Chairman, Budapest

Conseil britannique du droit d'auteur (BCC)/British Copyright Council (BCC)

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Centre d'études internationales de la propriété intellectuelle (CEIPI)/Centre for International Intellectual Property Studies (CEIPI)

François CURCHOD, chargé de mission, Genolier

Centre for Internet and Society (CIS)

Nirmita NARASIMHAN, Programme Manager, CIS, New Delhi

Chamber of Commerce and Industry of the Russian Federation (CCI RF)

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Chambre de commerce internationale (CCI)/International Chamber of Commerce (ICC)

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Centre international pour le commerce et le développement durable (ICTSD)
/International Center for Trade and Sustainable Development (ICTSD)
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Civil Society Coalition (CSC)
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Comité "acteurs, interprètes" (CSAI)/Actors, Interpreting Artists Committee (CSAI)
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Copyright Research Information Center (CRIC)
Shinichi UEHARA, Visiting Professor, Graduate School of Kokushikan University, Tokyo

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Discapacitados Visuales IAP
Camerina Ahideé ROBLES (Mrs.), President, Mexico D.F.

Fédération ibéro-latino-américaine des artistes interprètes ou exécutants (FILAIE)/
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Fédération internationale de la vidéo/International Video Federation (IVF)
Theodore SHAPIRO, Senior Vice President, General Counsel and Deputy Managing
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Benoît MÜLLER, Legal Advisor, Brussels

Fédération internationale de l'industrie phonographique (IFPI)/International Federation of
the Phonographic Industry (IFPI)
Shira PERLMUTTER (Ms.), Executive Vice-President, Global Legal Policy, London

Fédération internationale des acteurs (FIA)/International Federation of Actors (FIA)
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Fédération internationale des associations de bibliothécaires et des bibliothèques
(FIAB)/International Federation of Library Associations and Institutions (IFLA)
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Fédération internationale des associations de producteurs de films (FIAPF)/
International Federation of Film Producers Associations (FIAPF)
Bertrand MOULLIER, Expert, Head, Policy, Paris
John BARRACK, Chief Legal Officer, Canadian Media Production Association, Toronto
Reynolds MASTIN, Counsellor, Canadian Media Production Association, Toronto

Fédération internationale des musiciens (FIM)/International Federation of Musicians (FIM)
John SMITH, President, Paris
Benoît MACHUEL, secrétaire général, Paris
Bill SKOLNIK, Vice President, Canadian Federation of Musicians, Toronto

Fédération internationale des organismes gérant les droits de reproduction (IFRRO)/
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Olav STOKKMO, Chief Executive Officer, Brussels

Association international du barreau (IBA)/International Bar Association (IBA)
Thomas LEGLER, Python & Peter LLP, Geneva
Maxime ROCAFORT (Ms.), Python & Peter LLP, Geneva

Conseil international des archives (CIA)/International Council on Archives (ICA)
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International Music Managers Forum (IMMF)
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Association IQSensato (IQSensato)
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Library Copyright Alliance (LCA)
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Union internationale des éditeurs (UIE)/International Publishers Association (IPA)

Jens BAMMEL, Secretary General, Geneva

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V. BUREAU/OFFICERS

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Vice-présidents/Vice-Chairs: Graciela Honoria PEIRETTI (Sra.) (Argentine/Argentina)

Abdellah OUADRHIRI (Maroc/Morocco)

Secrétaire/Secretary: Richard OWENS (OMPI/WIPO)

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