

# WIPO



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**WORLD INTELLECTUAL PROPERTY ORGANIZATION**  
GENEVA

## **STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS**

**Seventh Session**  
**Geneva, May 13 to 17, 2002**

REPORT

*adopted by the Standing Committee*

1. The Standing Committee on Copyright and Related Rights (hereinafter referred to as the “Standing Committee” or “SCCR”) held its seventh session in Geneva from May 13 to 17, 2002.

2. The following Member States of WIPO and/or members of the Berne Union for the Protection of Literary and Artistic Works were represented in the meeting: Argentina, Australia, Austria, Belarus, Belgium, Belize, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, China, Colombia, Costa Rica, Côte d’Ivoire, Croatia, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Gabon, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Honduras, Hungary, India, Indonesia, Ireland, Italy, Jamaica, Japan, Jordan, Kenya, Kyrgyzstan, Latvia, Luxembourg, Madagascar, Malaysia, Mexico, Morocco, Namibia, Netherlands, Nicaragua, Norway, Pakistan, Panama, Philippines, Portugal, Republic of Korea, Russian Federation, Romania, Singapore, Slovakia, Slovenia, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Tunisia, United Republic of Tanzania, United Kingdom, United States of America and Venezuela (72).

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

4. The following intergovernmental organizations took part in the meeting in the capacity of observers: United Nations Educational, Scientific and Cultural Organization (UNESCO), World Meteorological Organization (WMO), World Trade Organization (WTO), League of Arab States (LAS) and *Organisation internationale de la francophonie* (OIF) (5).

5. Representatives of the following non-governmental organizations took part in the meeting as observers: Agency for the Protection of Programs (APP), American Film Marketing Association (AFMA), Asia-Pacific Broadcasting Union (ABU), Argentine Association of Performers (AADI), Association of Commercial Television in Europe (ACT), Association of European Performers Organisations (AEPO), Canadian Cable Television Association (CCTA), Central and Eastern European Copyright Alliance (CEECA), *Comité de Actores y Artistas Intérpretes* (CSAI), Copyright Research and Information Center (CRIC), *Entidad de Gestión de Derechos de los Productores Audiovisuales* (EGEDA), European Broadcasting Union (EBU), European Federation of Joint Management Societies of Producers for Private Audiovisual Copying (EUROCOPYA), European Group Representing Organizations for the Collective Administration of Performers’ Rights (ARTISGEIE), Ibero-Latin-American Federation of Performers (FILAIIE), Institute for African Development (INADEV), International Association of Broadcasting (IAB), International Confederation of Music Publishers (ICMP), International Confederation of Societies of Authors and Composers (CISAC), International Federation of Actors (FIA), International Federation of Film Producers Associations (FIAPF), International Federation of Musicians (FIM), International Federation of the Phonographic Industry (IFPI), International Literary and Artistic Association (ALAI), International Publishers Association (IPA), International Video Federation (IVF), Japan Electronics and Information Technology Industries Association (JEITA), Max-Planck-Institut for Foreign and International Patent, Copyright and Competition Law (MPI), National Association of Broadcasters (NAB), National Association of Commercial Broadcasters in Japan (NAB-Japan), North American Broadcasters Association (NABA), *Organización Iberoamericana de Derechos de Autor* (LATINAUTOR), Performing Arts Employers Associations League Europe (PEARLE\*), Software Information Center (SOFTIC), Union of Industrial and Employers’ Confederations of Europe (UNICE), Union Network International – Media and Entertainment International (UNI-MEI), World Association for Small and Medium Enterprises (WASME) and World Blind Union (WBU) (38).

6. The session was opened by Mr. Geoffrey Yu, Assistant Director General, who welcomed the participants on behalf of Dr. Kamil Idris, Director General of WIPO.

7. The List of Participants is attached to his report as an Annex.

#### ELECTION OF OFFICERS

8. The Standing Committee unanimously elected Mr. Jukka Liedes (Finland) as Chairman, and Mr. Shen Rengan (China) and Mrs. Graciela Honoria Peiretti (Argentina) as Vice-Chairpersons.

#### ADOPTION OF THE AGENDA

9. The Chairman suggested that the Committee first deal with the issue of the legal protection of databases before that concerning broadcasting organizations. This being accepted by the Committee, the Agenda (document SCCR/7/1) was unanimously adopted.

#### PROTECTION OF NON-ORIGINAL DATABASES

10. The Chairman referring to the five studies which had been commissioned by the Secretariat, invited delegations to examine the conclusions of these studies and to report on recent developments that might have taken place at the national and regional levels, including the existence of laws protecting such databases as well as any plans to enact such laws. He also asked the Secretariat to introduce the studies to the Committee.

11. The Secretariat stated that the following experts had carried out the studies on the basis of identical terms of reference: Mr. Yale M. Braunstein, Professor, School of Information Management and Systems, University of California, Berkeley, Mr. Sherif El-Kassas, Associate Director, Center for Academic Computing, Cairo, Mr. Thomas Riis, Associate Professor, Law Department, Copenhagen Business School, Copenhagen, Mr. Phiroz Vandrevalla, Chairman, National Association of Software and Services Companies (NASSCOM), New Delhi, and Mr. Zheng Shengli, Professor, School of Intellectual Property, Peking. After completing their preliminary studies, they had all been invited to an informal consultation at WIPO in Geneva, where they presented and discussed with the Secretariat their studies.

12. The Delegation of the European Community welcomed the completion of the five studies, which were very useful and would help to further the debate. Two studies referred in particular to the situation in two countries, whereas the three others were more general in nature. Some had a legal emphasis and others focussed on economic considerations. All these aspects were equally relevant for the understanding of the issue. The studies did not explain the nature of the *suigeneris* protections such as that in the 1996 European Directive 96/9 on the Legal Protection of Databases. The European Community had had some experience with the *suigeneris* protection of databases. The *suigeneris* protection had stimulated innovation and investment in the European Community and had neither interfered with research or education, nor with access to information. The first court decisions had been made at the national level, and a case was now pending before the European Court of Justice. The Delegations suggested that the Secretariat update WIPO document DB/IM/2 issued on

June 30, 1997, on existing national and regional legislation concerning intellectual property in databases.

13. The Delegation of Argentina, on behalf of the Latin American and Caribbean Group (GRULAC), considered the studies conducted by WIPO on the subject very valuable. It did say however that it had not been able to analyze them in depth, as they had not been circulated sufficiently in advance, and that it therefore reserved its position for the next session of the Committee. As the studies did not refer sufficiently to regional experiences and characteristics, the Delegation asked for the Secretariat to commission an additional study that would concentrate on the repercussions of the protection of non-original databases in the Latin American and Caribbean region. It added that the possible economic implications should be examined, as well as the repercussions for the dissemination of information.

14. The Delegation of the Russian Federation stated that it would examine the studies in detail. It referred to some proposals pending in the Russian Federation considering the introduction of additional protection of databases, based on quantitative and qualitative assessments of the matter. In dealing with possible proposals for original as well as of non-original databases, the working group faced a number of questions, which applied to both the national and the international frameworks. Some of those issues had been addressed in the studies. As examples of the issues, it referred to the protection of statistics derived from a sole source, and to the protection of data in the public domain. How to deal with data derived from the State and transmitted to groups or public entities for wide and free distribution was another issue. Those issues had to be considered by the Committee.

15. The Delegation of the United States of America informed the Committee that the Congress of its country was continuing its debate on establishing appropriate mechanisms for the protection of non-original databases. Discussions were continuing between two Congressional Committees, the House Subcommittee on Intellectual Property, Courts and the Internet, and the House Committee dealing with communications matters. The two Committees which had, in the past, developed competing bills, were now attempting to resolve their differences and prepare a joint draft text. The Delegation emphasized that the proposals that were now being considered by the Congress differed radically from the proposals that had been discussed in the past. The studies were a useful contribution to the SCCR's work. The Delegation hoped that in the near future it would be able to report more positive developments in terms of concrete legislative proposals.

16. The Delegation of China stated that the studies deserved careful review. It referred to the possibility of undertaking, with the Secretariat's permission, a Chinese translation of the five studies so that Chinese officials and experts could benefit from the results. Its country had a great wealth in the area of information and databases, which should be taken advantage of. Experts had already conducted studies on the issue. All types of databases could be protected no matter whether the data would be copyrightable or non-copyrightable. In 2001, its national copyright law made clear that the compilation of data or other material, which by reason of selection or arrangement of their content constitute intellectual creation, are protected. However, the question to consider was whether simple compilation of statistics such as a telephone directory or stock market prices should also be protected. The issue was whether there ought to be a specific law for their protection or other laws or even administrative measures. The developers of databases should get their due benefit but at the same time databases should be used as a source of knowledge and information by the public. There was as yet no common approach for the protection of non-original databases and the issue was still under discussion.

17. The Delegation of the Republic of Korea informed the Committee that a draft national law on the protection of non-original databases, prepared in consultation with the industry, had been introduced in Parliament in November 2001. It included provisions on technological measures of protection, rights management information, and also special provisions on liability. Specific exclusive rights had been introduced for producers of databases. The legislation was aimed at striking a balance between the rights to be granted to the database producers and the users. Therefore, a short term of protection of five years after completion of the database was foreseen and the exclusive rights would be very specific.
18. The International Publishers Association (IPA) recalled that the issue of protection of non-original databases was not new. Many different mechanisms of protection were in place. He noted that all the five WIPO studies had shown that databases were vulnerable to exploitation by freeriders, and that the merit of protection was to encourage the creation but also the dissemination of content. His Organization supported the Delegation of the European Community and was ready to contribute further to the discussion in favor of an acceptable framework of protection of non-original databases.
19. The Chairman concluded the discussions noting that more time was needed to allow the delegations to benefit fully from the WIPO studies. He invited the Secretariat to respond to the requests made by various delegations.
20. In response to the request by the Delegation of the European Community, the Secretariat stated that it would be pleased to update the survey of laws on the protection of non-original databases and invited Member States to provide information on existing laws in this field. With regard to the request from Argentina concerning a study of the Caribbean and Latin American countries, the Secretariat was ready to commission it, but in view of time constraints, its completion could not be promised for the next session of the Committee. Regarding the request from China, the Secretariat would contact the authors of the five studies in order to obtain permission for China to translate them into Chinese.
21. The Delegation of Morocco asked the Secretariat to translate the studies into Arabic. This would help the discussions on the issue in its country, particularly for a proposed new national law on copyright and related rights which for the first time would contain specific provisions on the protection of non-original databases.
22. The Delegation of Egypt supported the request by the Delegation of Morocco, which would allow the authorities in its country to benefit from the studies, at a moment when Egypt was preparing new, unified legislation on intellectual property.
23. The Secretariat assured the two Delegations that it would do its best to meet their requests.

## PROTECTION OF THE RIGHTS OF BROADCASTING ORGANIZATIONS

24. The Chairman introduced the issue, indicating that recent contributions allowed proper work to start on a future instrument for the protection of the rights of broadcasting organizations. Several proposals had been presented and interested parties had the chance to express their opinions on the issues. At the sixth session of the Standing Committee, the discussion was largely focused on definitions and the Secretariat had been asked to prepare a technical background paper to facilitate further debate. Since that session of the Committee, a new proposal had been presented by the Eastern Republic of Uruguay, regional consultations had taken place in the morning prior to the opening of the present session. He suggested that deliberations begin by examining WIPO's technical background paper (document SCCR/7/8).

25. The Secretariat introduced the paper which had been based on its own studies, on the one hand, and on useful information kindly supplied by non-governmental organizations, on the other. The approach taken was a neutral description of the technical aspects related to broadcasting, particularly in the context of new technological developments since the Rome Convention. A brief description was provided on the contents of the various chapters of the paper. In relation to the legal issues to be considered, it was pointed out that those were taken from the deliberations that had taken place in the last session of the Standing Committee.

26. The Chairman invited the Committee to express its views on the document before engaging in a debate on the substantive items. He suggested that a first round of exchanges focus on such elements as the notion of broadcasting, the inclusion of transmissions on the Internet and the degree of interactivity that might distinguish broadcasting from other forms of transmission.

27. The Delegation of Mexico stated that it had undertaken consultations at national level and it believed that very soon, it would be in a position to communicate its conclusions.

28. The Delegation of the European Community referred to its treaty language proposal, presented in the sixth session of the Standing Committee. All five proposals presented so far in the Committee, including the most recent proposal by the Eastern Republic of Uruguay, shared the same principles and demonstrated a considerable amount of common ground. The sixth session of the Standing Committee had identified areas where further work was needed. Among those areas were the issues of webcasting, the extent to which transmissions over new digital networks should be included in the scope of the new instrument, and the need for separate protection of pre-recorded signals. The technical background paper was a very valuable document which shed light on the above issues and could serve as a catalyst in the search for appropriate solutions. The Delegation noted that, when trying to draw the line between acts qualifying as broadcasting and other forms of transmission, one should be aware that only those activities deserved intellectual property protection which fulfilled certain criteria, such as the emission of program-carrying signals, reflecting investment and selection. Second, truly interactive activities did not constitute broadcasting since Article 8 of the WIPO Copyright Treaty (WCT) and Articles 10 and 14 of the WIPO Performances and Phonograms Treaty (WPPT) established true interactivity only in the case when the emission could be perceived at a time and from a place chosen individually by the recipient. A traditional broadcasting did not become interactive only because some interactive acts took place at its margins or because the broadcasting had been accessed through a computer or a similar device. Third, the technical medium or means of a transmission did not define its nature as broadcasting or non-broadcasting. Note every transmission could qualify as broadcasting, especially in the context of new digital networks such as the Internet. The European

Community shared the view that interactivity was a fundamental criterion for distinguishing between broadcasting and certain types of webcasting. There were other additional factors such as the transmission of a program based on selection and investment, irrespective of the medium of transmission. More clarity was also needed on the issue of pre-broadcast signals and the need for special international protection.

29. The Delegation of Singapore made two observations: first, in relation to webcasting, it wished to receive information as to which aspects of webcasting were synonymous with traditional broadcasting; second, concerning the difference between webcasting and simulcasting, the Delegation felt that a better understanding was needed since the only evident difference was that simulcasting covered real time. Broadcasting required public reception, whereas webcasting was a transmission from point to point. The Delegation wondered what modifications would be needed in the definition of broadcasting so that it could cover certain aspects of webcasting.

30. The Chairman indicated that the notion of broadcasting already existed in the Berne Convention and the Rome Convention. It was possible to develop a new broader definition of "broadcasting," or, perhaps, to maintain the "traditional" notion but extend the treatment accorded to broadcasts, by referring to other kinds of facts. There were many different ways to reach appropriate protection. For that purpose, the current discussions could cover issues referring to the qualities and attributes of program-carrying signals, the level of interactivity, the investment made for the program, and the distinction between signal and content.

31. The Delegation of Australia found the technical background paper of enormous help. There was certain common ground when discussing traditional broadcasting over the air, cable transmissions and transmission through Internet. In that respect, however, it asked for clarification of the same issues that were raised by the Delegation of Singapore. Further guidance was needed with reference to the essential difference between transmissions made point to point, such as streaming on the Internet transmissions in real time, and point to multipoint, as in the case of broadcasting over the air. If a certain minimum of interactivity was being discussed, the Delegation asked what was the difference between real time Internet transmission and cable delivery, since the latter also required some interactive steps. The Delegation queried the distinction between the broadcast signal and its content. It must be clear to all that the reference to signals was to program-carrying signals, whether sound or sounds and images. Finally, it shared the view expressed by the Delegation of the European Community that the fundamental rationale for protection was the investment which had to be made to produce and transmit the program-carrying signals.

32. The Chairman noted that the protection for broadcasters was based on certain concepts that had worked for 40 years. From a practical point of view, the questions raised by the Delegation of Australia regarding program-carrying signals did not represent any difficulty.

33. The Delegation of the United States of America said that many of the questions raised by the Delegation of Australia were matters of thorough discussions with the United States of America. Some important issues under discussion referred to questions such as: how to define the object of protection, including program-carrying signals; who should be protected; and how to avoid problems between right holders. The Rome Convention had not been ratified by its country, where the protection of broadcasting organizations was based on both telecommunication law and copyright law, so certain existing concepts could represent difficulties. However, in its view, the most important issue was that broadcasters needed

protection against piracy and perhaps consideration of the grant of rights should be based on how best to prevent the unauthorized interception and transmission of signals.

34. The Delegation of the Russian Federation acknowledged the importance of having a definition of "broadcasting" as well as answering questions such as who should be protected and what should be the object of protection. Also, "cable transmission" and "program-carrying signal" were fundamental concepts that needed to be defined in an instrument for the international protection of broadcasters. More clarifications were needed to help its country prepare its own law.

35. The Delegation of Japan referred to the questions raised by the Delegation of Australia about the essential difference between Internet transmissions and point-to-point transmissions. The distinction, it pointed out, would be based on whether or not the receiver of the transmissions needed to have access to a server. All Internet transmissions were initiated by receivers' access to the server. This clear distinction had been used in the national law of its country.

36. The Chairman referred to the Agenda item "other issues," and invited the Committee to consider possible new issues to be addressed in its future work, such as: rights management information, collective management of rights (linked to the preceding issue), licensing conditions, applicable law in cross-border situations involving contracts and infringements.

37. The Delegation of Kyrgyzstan stated that the issue of protection of broadcasting organizations was a topical one for his country. While it had a law on copyright that covered the protection of broadcasting organizations, it was not effectively applied. The Delegation urged a high standard of protection for broadcasting organizations. The Committee should draft a new international instrument with clear definitions without forgetting the broadcast content. Many difficult questions, including the issue of interactive transmissions on the Internet, still remained to be solved. The distinction between the signal and the content of the broadcast or the program was difficult to put in practice since it concerned, in particular, problems of encryption and decryption of signals.

38. The Delegation of Egypt requested the Secretariat to make documents available in good time before sessions of the Committee. It also requested that such documents be translated into Arabic. As for the technical background paper, the Committee should continue to study questions relating to wire transmissions, such as cable transmissions and transmissions on the Internet. It should also focus on legal issues of the types of activities to be covered without considering unnecessary technical details since technologies evolved with time.

39. The Delegation of Indonesia proposed that representatives of the International Telecommunication Union (ITU) be invited to give information on technical questions, including on what the member States of ITU had done so far to protect broadcasting organizations and the scope of such protection.

40. The Delegation of Morocco supported the request of the Delegation of Indonesia and informed the Committee that discussions had been held among national interest groups in its country. In the course of the discussions, it had been pointed out that there should be clear definitions. Information from the ITU would be welcome as the definitions used in ITU or definitions in the proposal should be clarified from countries being considered by the Committee.

41. The Delegation of Singapore suggested that the terms “webcasting” and “simulcasting” be avoided since those concepts were not clear. The Committee should rather use the term “real-time streaming.” Second, the Delegation noted that the term “rebroadcasting” was absent in the proposal made by the European Community. Instead it contained the term “retransmission.” The Delegation asked for clarification whether it had the same meaning as the term “rebroadcasting” as used in Article 13(a) and defined in Article 3(g) of the Rome Convention. Further, the Delegation asked for clarification concerning the last sentence of Article 1 *bis* of the proposal made by the European Community.
42. The Delegation of the European Community responded that the last sentence of Article 1 *bis* of its proposal meant that the mere retransmission of another entity’s broadcast was not genuine broadcasting that should be protected. The right of retransmission in its proposal was based on the right of rebroadcasting in Article 13(a) of the Rome Convention as defined in Article 3(g) of the same Convention. There were two Rome -plus elements in its proposal. First, retransmission by wire was included, and, second, it covered retransmission based on fixations.
43. The representative of the European Broadcasting Union (EBU) stated that the objective of adopting a new instrument was to complete the updating of the Rome Convention. Due to technological developments that had taken place since the adoption of the Rome Convention, there were many gaps between that Convention and the reality. Broadcasting organizations were unable to protect the huge investments in their broadcasts that were vulnerable to piracy. The adoption of a new instrument should not be further delayed. There were conflicting views over some issues and one solution would be to leave the questions of wire transmissions, including cablecasters, to the national legislation at the present stage and to deal with that question later in a separate treaty. The question of protection of cablecasters analogous to traditional broadcasters, however, was different from the issue of protecting broadcasters against unauthorized wire transmission including cabled distribution. The right of cabled distribution was a cornerstone in the protection of broadcasting organizations. Lastly, the possibility of rapid injunctive relief against signal piracy was more crucial than obtaining monetary damage at a later time. It was difficult for broadcasting organizations to prove whether it was the pre-broadcast or the broadcast signal that was stolen. Therefore the protection of pre-broadcast signals was important. The Brussels Convention addressed the issue of pre-broadcast signals, but simply obliged each Contracting State to take adequate measures to prevent distribution of the signal. Broadcasting organizations could not necessarily take actions based on exclusive rights since the provision of exclusive rights was only one of several possible means for ensuring the protection. Protection under telecommunication law was another solution. That solution, however, obliged a telecommunication authority to take action against another telecommunication authority and provided no incentive for it to seek to act on behalf of a given broadcaster. There was no clarity and non-uniformity in implementation of the Brussels Convention. Broadcasting organizations themselves should be able to take actions against piracy under a new treaty.
44. The representative of the International Literary and Artistic Association (ALAI) noted that the concept of “program -carrying signals,” far from being only a conceptual issue, had important practical implications. That concept represented the main dividing line between copyright and related rights and the rights of broadcasting organizations. Broadcasters tried to blur that distinction by alluding to the broadcasting of sports events, and aligning these activities with the broadcasting of cultural events. He called for a study that would cover the legal realities of broadcasting, including litigation, as well as the economic dimension of the problems posed by piracy. Here referred also to the list of subjects proposed by the Chairman

of the Committee (document CRP/SCCR/7/1) for future consideration of that body. Collectively management, as well as individual management of copyright and related rights were most important issues for consideration.

45. The representative of the International Federation of Musicians (FIM) indicated that profit, and not intellectual property, should be the reward of investment. He rejected the possibility of equalizing the protection for the broadcast of sports, news and cultural events. Broadcasters sometimes undertook creative activities, but the fact that these were frequent at the time of the Rome Convention accounted for the synonymous use of broadcast and broadcasting in that Instrument. In most cases such creative activities would have been already protected because of the copyright protection afforded to the contents. The European Community had spoken not only of investment but also of selection as a criterion for protection. However, the protection afforded by intellectual property requires something else, namely, a minimum level of creative input. All other broadcasts should be protected by means of rules on unfair exploitation. The European Database Directive could serve as a model for a protection penalizing the unfair extraction of content, irrespective of its character. Signal and content were so entangled that it would be impossible to distinguish one from the other. A "broadcast" should be defined in a traditional way and no protection should be afforded to signals without creative content.

46. The representative of the Association of Commercial Television in Europe (ACT) contested the argument that investment did not deserve in itself intellectual property protection, and called on the Delegation of IFPI to confirm whether investment in the sound recording industry should be protected. The broadcast, as the object of protection, crystallized the organizational efforts of the broadcasting organizations. The element of public reception in the definition of broadcast implied an absence of interactivity, as the broadcaster and not the user would be choosing the time for viewing or listening to the works broadcast. However, the object of protection should not be defined too narrowly, or modeled exclusively on the traditional activities of broadcasters. Therefore, protection should be granted to the distribution of content on the Internet by a broadcasting organization. The plurality of business models should be acknowledged and the SCCR should refrain from privileging only some of them.

47. The representative of the International Federation of Actors (FIA) stated that the current discussions on the protection of broadcasting organizations were premature, due to the lack of clear definitions of the beneficiaries and objects of protection. He contested the possibility of achieving a greater protection for performers by means of increasing the rights of broadcasters. Performers should be directly afforded their own means of protection. Broadcasters already benefited from protection in their capacity as producers. The balance between different right holders should be redressed by opening discussions on the protection of audiovisual performances and avoiding the grant of new rights to broadcasters.

48. The representative of the International Federation of the Phonographic Industry (IFPI) indicated that only the proposal of Argentina and that of the broadcaster themselves included a definition of "broadcasting organization." The lack of a clear definition of that term, both in existing treaties and, to a lesser extent, in the treaty proposals, resulted in attempts to address that issue under the question of the object of protection. It was therefore very important to maintain the consistency of the definitions of broadcasting in respect of other intellectual property treaties. A change in the definition of broadcasting could result in extending to other beneficiaries, such as webcasters, the current compulsory license regime in place for broadcasters. She contested the idea that every activity undertaken by a broadcaster should be

considered as broadcasting as, for example, broadcasters are even providing e-commerce services to viewers. The decisive criteria for granting protection should be the need for such protection. According to those criteria, the WPPT did not offer an appropriate model, and protection should be limited to the necessary elements for fighting piracy. The earlier remarks of the Delegation of the United States of America represented a step forward in that direction.

49. The representative of the National Association of Commercial Broadcasters in Japan (NAB-Japan) referred to paragraph 19 of the Secretariat's technical background paper, and contested the idea that it was impossible to distinguish content from signal. He also rejected the assertion, included in that same paragraph, that pirates are mainly interested in content. Distinguishing between content and signal was no harder than distinguishing between a phonogram or a DVD and its content. Moreover, that content derived most of its value from the broadcaster that carried, organized and promoted it. The signal was to be considered the objective of piracy, mainly because there was no public interest in the content without its signal. The opening sentence of paragraph 53 of the technical background paper implied that it was possible to technologically restrict global access to webcasts. He disagreed and alluded to a number of technical means that were employed in the circumvention of such technological restrictions. His Organization was opposed to a treaty based only on signal-theft criteria, and preferred affirmative rights on the model of the Brussels and Rome Conventions. In order to deserve protection, signals should be broadcast for reception by the public. The definition of "broadcasting organization" and the object of protection should be left to national legislation. e

50. The representative of the National Association of Commercial Broadcasters in Japan (NAB-Japan) referred to the WIPO technical background document, and specifically to the concept of "interactive services in broadcasting" as contained in various paragraphs. Viewers enjoying such new digital television services, such as multi-channeling, program enhancement, datacasting, EPG and personal TV services, were able to enjoy those services without contacting the broadcasters by way of the "return path." Even though such services employed digital technology, they were not "interactive" transmissions, but merely offering a variety of choices to the receiver. As an example, a service which offered three camera angles for the viewer to choose from was not an "interactive" transmission, but rather a transmission of three broadcast signals at the same time. Another example was that of a viewer watching a shopping channel, who could buy goods via a telephone, fax or the Internet; that was not "interactive" broadcasting. Thus, "interactive services in broadcasting" as contained in Chapter III of the document, were in reality news services in the realm of traditional broadcasting. In webcasting and streaming, the transmitting server was in active contact with the receiving machine; such was not the case with broadcasting, where the main transmission was only one way. The representative also noted that, with respect to Chapter IV of the document, "Elements" in paragraph 76 should be discussed among others, and it would be as worthwhile for the Committee to establish in any new instrument protection against piracy, as described in paragraph 70 of the document.

51. The representative of the International Confederation of Societies of Authors and Composers (CISAC) said that copyright was created to reward skill, labor and creativity rather than investments. He warned that the Committee should limit its focus on the issue of signal piracy. The Committee should not seek to create protection for the sake of protection, but rather, should look to the empirical evidence as to what exactly needed to be protected. There should be a balance between users and creators; improperly expanding the system would create an imbalance. He supported the intervention of the representative of ALAI.

52. The representative of the Asia-Pacific Broadcasting Union (ABU) said that the Committee needed to focus on the rights of broadcasting organizations, and not attempt to create protection for other organizations. He noted that there was consensus among the governments that broadcasting organizations required new levels of protection, since the last round of protection for them had been the Rome Convention, more than 40 years ago. The representative was not against other organizations receiving protection, but to attempt to include them within the scope of a new instrument currently being discussed would bring on many problems, and as a result, the negotiations could go on indefinitely. He felt that the issue of protecting signals versus programs was producing difficulties, since no organization wished to protect empty signals. He asked that the Committee produce a pragmatic solution to the problems faced by broadcasting organizations, and leave the problems faced by the organizations other than broadcasters, such as webcasters, for another time and place.

53. The representative of the American Film Marketing Association (AFMA), speaking on behalf of that Organization as well as for the Association for the International Collective Management of Audiovisual Works (AGICOA) and the International Federation of Film Producers Associations (FIAPF), took the position that neither retransmission nor cable re-transmission was broadcasting. Only original broadcastings should be covered under an instrument. A large part of broadcast fixations were reproduced by parties other than broadcasters. Therefore, the Committee should not lose sight of the fact that content is subject to rights separate from signal protection. Video on demand was a service which was provided by both broadcasters and other parties which were not broadcasters. Also, the Committee should not overlook contractual protection. Broadcasters should not attempt to claim protection under simulcasting, but rather, protection should be granted to a broadcasting organization when it delivered content in an individually scheduled transmission. The representative offered to share with the Committee his Organization's model licensing contracts.

54. The representative of the North American Broadcasters Association (NABA) stressed the importance of geographically based licensing of television programs. Market exclusivity was the key economic driver of the television industry, and was critical to broadcasters as well as producers of programs. Piracy interfered with market exclusivity; it diminished the value of programs to the broadcasters. In North America, there had been increasing incidences of cross-border satellite piracy. Stronger rights for broadcasting organizations would greatly assist the organizations in fighting that problem. Another major problem for broadcasting organizations was the retransmission of their signals on the Internet, which had the ability to completely breakdown the territorially based licensing system that was the economic foundation of the broadcasting industry. It was therefore imperative that the Committee address those serious threats as quickly as possible by recommending new rights to assist broadcasting organizations to combat new forms of technically-enabled theft.

55. The representative of the *Comité de Actores y Artistas Intérpretes* (CSAI) endorsed the statements made by the representatives of FIA, CISAC and IFPI that warned against the haste with which the matter of the protection of broadcasters was being addressed, whereas the adoption of an instrument on audiovisual performances was still pending. He maintained that, as long as a balanced framework for the rights of original owners or creator had yet to be completed, it did not seem appropriate to embark on a second phase of protection for another type of operator on the content market, and indeed one with whom there was a clear possibility of conflict of interest. To continue along the path towards an international instrument of intellectual character in order to meet needs that were outside its actual scope and alien to its nature could produce an unintended, pernicious short and medium-term result,

namely the adulteration of the very essence of copyright. Such market operators were trying to bring to these at of copyright a range of subjects and problems that national legislation had already started to deal with by means of specific telecommunications and anti-piracy legislation. Finally he warned that copyright possesses residual character in addition.

56. The Chairman introduced document CRP/SCCR/7/1 Rev. and suggested that it could serve as the basis of discussions during the remainder of the Committee's work during this session.

57. The representative of the Ibero-Latin-American Federation of Performers (FILAIIE) endorsed the statements made by the representatives of CSAI, FIA and IFPI. The protection of the general interests of creators, namely authors and performers, should not be undermined by the protection of broadcasters. With regard to the statements made by a number of government representatives, he said that, regardless of the protection measure that could be referred to the individual States for implementation, the hypothetical Treaty should retain within itself a greater degree of protection of performers' rights.

58. The representative of European Group Representing Organizations for the Collective Administration of Performers' Rights (ARTISGEIE) expressed her concern about the fast pace of discussions on the updating of the rights of broadcasting organizations. Broadcasters already enjoyed a certain protection. It was necessary to clarify the definition of "broadcasting organization." Further discussions should focus on limiting the protection to what was necessary for the fight against piracy of signals.

59. The Delegation of China said that new technological developments and business models had to be taken into account when protecting broadcasting organizations. One should in particular establish clearly the object of protection. Program-carrying signals had to be protected no matter whether the transmission was made over the air, by satellite or cable. The recently revised copyright law of China protected the three types of transmissions for 50 years. The issue of transmissions on the Internet should be seen as the use of new business models by broadcasting organizations. Finally, the updating of the protection had to strike a balance among the different right holders.

60. The Chairman presented document CRP/SCCR/7/1 Rev. 2 as an effective basis for concrete discussions. The paper contained two columns that referred to the objects of protection and to the rights or restricted acts corresponding to each object. The column on objects of protection listed those objects according to their apparent level of acceptability by the Committee. They were: (1) "traditional" transmission over the air for direct reception by the general public; (2) cable originated transmissions of program-carrying signals; (3) pre-recorded broadcast signals; (4) simultaneous real-time streaming of (1) and/or (2); and (5) Internet originated real-time streaming. Also, as regards the second column, rights or restricted acts were listed according to their level of necessity to combat piracy and the need to regulate broadcasters' positions as economic operators. They were: (1) fixation; (2) reproduction of fixations; (3) distribution of fixations; (4) decryption of encrypted broadcasts; (5) rebroadcasting; (6) cable retransmission; (7) retransmission over the Internet; (8) making available of fixed broadcasts; (9) rental of fixations; (10) communication to the public (in places accessible to the public). In addition, he referred to the three notions often used: "broadcast," "broadcasting" and "broadcasting organization" and explained the generally accepted distinction between them.

61. The Delegation of Switzerland welcomed that paper and pointed out that a definition of piracy had not been considered. Many answers in that respect could be given, therefore one ought to be very careful in considering this issue. The experience of the Council of Europe was an example in that respect. The rights already granted in the Rome Convention should not be challenged again. Other right holders needed to be protected and a balance among their rights with the new rights under discussion had to be struck. Perhaps some differentiation in the nature of rights for broadcasters was necessary but more evidence in that respect was needed. The Delegations supported the granting of the right of decryption that had already been included in its proposal, and which had been designed to fight piracy. It also supported the granting of rights of rental, fixation and communication to the public as a possible right of remuneration.

62. The Delegation of Canada indicated that some other types of distinctions could be made concerning the rights or restricted acts in the conference room paper. Thus, the production of fixations and the distribution of fixations could be qualified by adding the word "unauthorized." This corresponded to the approach taken in the Rome Convention and if one wished to focus on piracy, a recommended approach would be to speak about acts in relation to unauthorized fixations.

63. The Chairman welcomed the proposals for further refining the proposed distinctions. He further inquired whether any delegation disagreed with the listing of certain rights in the conference room paper which represented essential tools for fighting piracy.

64. The Delegation of Mexico informed the Committee of the existing provisions in its national legislation. The Mexican law of March 1997 established that a broadcasting organization was an entity that was able to emit sound or visual signals that could be received by the public. The law also covered the communication of sound and image signals by cable, optic fibers and others similar transmission medium as well as the sending of signals from a terrestrial transmitter to a satellite for further distribution. Transmission encompassed also simultaneous transmission of a broadcast by another broadcasting organization. The law further stated that the broadcasting organizations should have the right to authorize or to prevent the retransmission of its programs, deferred transmission, simulcasting, fixation, reproduction and communication to the public by any medium or any forms of profit making. Damages were to be paid by the person who, without the authorization of the legitimate owner of the signal, redistributed or participated in the production, import, sale, rental or any other form of the program carrying signals. The duration of the protection for the broadcasting organizations was 25 years from the first broadcasting of the program. Mexico was trying to combat piracy in all its aspects.

65. The Delegation of the Russian Federation pointed out that when discussing the issue of the rights of broadcasting organizations, one has to bear in mind that while preparing the future international treaty, the need to differentiate between the protection of the rights of broadcasting organizations in those cases when they use and broadcast their own programs, on the one hand, and when the broadcast program uses fixations belonging to other copyright and neighboring right holders, on the other hand.

66. The Chairman clarified that, when drafting international treaties, the general approach was not to regulate the treatment that the contracting parties grant to their national right holders, but that of right holders in other Contracting Parties. National legislation thereafter would normally grant domestic right holders the same protection as the foreign ones.

In this sense, the international treaties had an indirect effect on the level of protection of domestic rightholders.

67. The Delegation of Italy referring to document CRP/SCCR/7/1/Rev.2, stated that there was a need to concentrate on the new rights provided in addition to the rights in the Rome Convention, namely, the right of distribution of fixations, the right of decryption of encrypted broadcasts, the right of making available of fixed broadcasts and the right of rental of fixations. All other rights on the paper were already covered by the Rome Convention. With regard to Article 13(a) of the Rome Convention, it could include items (5), (6) and (7) of the rights on restricted acts in the paper. Other rights such as distribution, making available of fixations, rental of fixations generated problems and conflicts between the rights of the authors, performers and producers, on the one hand, and the rights of broadcasters, on the other hand. It was not obvious whether the rights of making available, of rental, distribution and fixation needed to be recognized since similar rights were not granted to all other categories of rightholders.

68. The Chairman clarified that the 69 countries party to the Rome Convention did not have problems with the rights approach. At the same time, some of the countries that had not joined the Rome Convention had joined the TRIPS Agreement, which did not contain an absolute obligation to grant rights to broadcasting organizations.

69. The Delegation of the European Community pointed out that the rights of broadcasting organizations had been covered already in the Rome Convention. The member States of the European Community also had protection that went beyond the Rome Convention. When trying to find out what kind of rights to grant to broadcasting organizations for their "traditional activities," one needed to apply the same reasoning to that applied when granting intellectual property rights to other sectors. For the countries members of the Rome Convention, the current discussions were to update the Rome Convention in the light of its Article 22. It seemed that common ground was emerging on some basic rights to be granted to broadcasters for their traditional activities. Those rights could be grouped into four categories. The first comprised of the right of fixation, reproduction of fixations, right of rebroadcasting and the right of communication to the public, the latter corresponding to Article 13(d) of the Rome Convention. As for the second category, the right of cable retransmissions and the right of retransmission were sufficiently similar to the Rome Convention rights and could also be added to the list for consideration. The rights in this category were addressed in Article 6 of the proposal of the European Community. A third category comprised of the right of distribution of fixations and the right of making available of fixed broadcasts. They were contained in the WPPT and it was legitimate to pose the question whether those rights should not also be attributed to broadcasters. The European Community and its member States believed that those rights should legitimately be provided to broadcasters and they were addressed accordingly in their proposal. The fourth category included the right of decryption of encrypted broadcasts and the right of rental of fixations. Those were not to be found anywhere in relation to broadcasting and it was questionable whether broadcasting organizations needed such rights. Those two rights were thus not addressed in their proposal.

70. In relation to the right of decryption of encrypted broadcasts, the Chairman clarified that it appeared on his list in view of the possible application of the model of the WCT and WPPT regarding the protection of technological measures.

71. The Delegation of Japan requested a clarification relating to the right of rebroadcasting. It was understood that it covered retransmission to the public over the air. Since, in the conference room paper, there was no qualifier on retransmission, it was not clear whether the right of retransmission covered rebroadcasting. If all types of retransmission were covered under the right of retransmission, the right of retransmission would not only cover the right of retransmission to the public but also the retransmission from point to point. The Delegation wondered whether it was appropriate to protect retransmissions from point to point in addition to retransmission to the public. htof

72. In responding to the above, the Chairman explained that by rebroadcasting was meant retransmission over the air, as defined in Article 3(g) of the Rome Convention. Cable retransmission was also used in the sense of retransmission to the public.

73. The Delegation of Australia referred to the statement by the European Community on the right of communication to the public as a right stemming from the Rome Convention. It was subject to reservation in that Convention, which indicated that it was a weaker right in the Rome Convention, a right on which there had been less agreement. nthe

74. The Delegation of Singapore referring to document CRP/SCCR/7/1/Rev.2, pointed out that there was a certain overlap between the objects of protection and the corresponding rights or restricted acts. As an example, simultaneous real-time streaming could be interpreted as simultaneous transmission of broadcast signals. The right of retransmission in the European Community proposal covered the right of simultaneous retransmission of broadcast signals as well. Some simplification could be achieved if one focused on what needed to be protected as broadcast signals and then consider the kind of right to be attributed to entities that enjoy the protection.

75. The Chairman agreed that some overlapping existed since certain operations for which rights could be accorded enjoyed protection as objects of protection. This overlap could be settled when more clarity was established on the basis of discussions.

76. The representative of the International Federation of Musicians (IFM) referred to the rights of fixation and reproduction and indicated that, before granting such rights to broadcasting organizations, their meaning would have to be clarified. The concept of reproduction was defined by the Rome Convention but not the concept of fixation. Fixation referred to the change from a material form to an immaterial form and reproduction meant the copying of that part. In the WPPT, fixation referred to the embodiment of sounds, or of their representations thereof from which they could be perceived, reproduced or communicated through a device. If a fixation right was to be granted to broadcasters, images would have to be added to that definition. The embodiment then referred to what was not embodied, so a possible fixation right for broadcasters would only apply to live unrecorded events, whether they be sport events, performances or news events. Here referred to the difficulty of separating the content from the signal. In the case of a broadcast of a live performance of a musician, it had to be decided whether the fixation right would apply to the program-carrying signal or to the performance. It was crucial to clearly state that the new instrument would not conflict with or affect rights granted under other treaties. ict

77. The representative of the International Federation of the Phonographic Industry (IFPI) referring to document CRP/SCCR/7/1 Rev.2, asked why item 4 relating to Internet originated transmissions had been included in the category of the object of protection since this was an activity.

78. The Chairman replied that item 4 had been included on the basis of previous discussions where some delegations referred to the situation where a broadcaster had initiated streaming over the Internet coinciding with simultaneous broadcasting over the air. It had been noted then that it would not be realistic to treat under different legal regimes the same broadcast signal transmitted over the air and simultaneously streamed over the Internet by the same broadcaster.

79. The representative of the International Federation of the Phonographic Industry (IFPI) referred to the rights mentioned in the conference room paper. Only the fixation right corresponded to the rights granted by the Rome Convention. Most rights relating to the protection of the content had been copied from the WPPT, and other rights linked to the fight against piracy had been added. There was a risk of overlapping and a necessity to focus on the activities and specific needs of broadcasters, such as the issue of unauthorized reception of the broadcast and its retransmission, which were activities vulnerable to piracy. Not all the rights mentioned were relevant to the fight against piracy.

80. The representative of the Association of Commercial Televisions in Europe (ACT) asked for clarification relating to the protection of encrypted broadcasts. The notion of “traditional” broadcasting, as indicated in the conference room paper, referred to the definition of broadcasting contained in Article 3(f) of the Rome Convention. That definition of broadcasting had been updated by the WPPT, which included transmissions by satellite and transmissions of encrypted signals, and it had to be clarified that this was the definition to be taken into account in terms of object of protection. He also referred to document SCCR/7/8 where encrypted broadcasts were dealt with under the section referring to technological protection measures. Technological protection measures were under the WCT and WPPT used as flanking measures and could only be used in conjunction with an underlying substantive right. However, decryption measures were a fundamental element of the operation of broadcasting industries and would have to be included in the new instrument.

81. The Chairman indicated that the notion of broadcasting defined in the WPPT could also be established by interpretation of the Rome Convention, and noted that decryption had been referred to as a specific right by at least one of the proposals on the rights of broadcasting organizations.

82. The Delegation of Canada agreed that it was relevant to distinguish between traditional broadcasting relating to free over-the-air transmission as opposed to encrypted transmissions because the rights and restricted acts applying in both cases could be different.

83. The representative of the European Group Representing Organizations for the Collective Administration of Performers' Rights (ARTISGEIE), agreed with the methodology suggested by the Chairman. It was necessary to define which forms of broadcasting would be protected and to define broadcasting organizations. Rights applying to the fight against signal piracy had to be spelled out, and the protection granted to broadcasting organizations had to be limited to those rights. The new instruments should not address rights relating to investment. The objective of the updating of the Rome Convention was to provide broadcasters with better means to control piracy. In 1961, one of the justifications for granting broadcasting organizations specific rights related to the fact they were retransmitting cultural programs, where creators and performers had made contributions. Granting a series of extended rights to broadcasting organizations would be unwarranted without due account made of the contributions of others in the program transmitted.

84. The Chairman stated that the Rome Convention was not an excessive reference point because the treaty language proposals submitted by the Delegations contained a full set of rights which reflected the Rome Convention level of protection. No conclusion could be drawn which would limit the rights of broadcasting organizations to those necessary merely for the fight against piracy. However, the protection to be granted would neither prejudice the exercise of the rights granted to other categories of rightholders, nor affect existing provisions of the Berne Convention, in particular the protection granted under Article 11 *bis*(2) of that Convention nor recognized in other treaties. He then requested the Committee that it examine the second point of the object of protection, relating to cable originated transmissions in the conference room paper.

85. The Chairman invited the Committee to consider item 2 under the Object: Cable originated transmission of program -carrying signals, in the conference room paper.

86. The Delegation of Switzerland indicated that cable originated transmissions should enjoy the same protection as traditional broadcasting. While the notion of "broadcasting" in the proposed instrument could be different from those contained in other treaties, it should clearly be stated that the definition of "broadcasting" in the new instrument concerned only that instrument, with no effect on other international treaties. Otherwise it could have adverse effects on the current scope of protection provided for broadcasting organizations under other treaties. In relation to the right of decryption of encrypted broadcasts, the proposed instrument should grant additional rights on the basis of those provided in the Rome Convention. The WPPT could serve as a parallel basis for consideration of additional rights to be granted. While some rights had been introduced in the WPPT as a response to technological developments, certain other rights, such as the right of distribution, had been included because it had been considered useful to fight piracy. Such rights should also be incorporated in the new instrument. Referring to the list of rights in the conference room paper, he observed that certain rights that were neither in the Rome Convention nor in the WPPT were indicated. The right of cable retransmission was one such right. The balance with the rights of other categories of rightholders, as well as permitted exceptions, should be taken into account. The justification of extending the right of remuneration for private copying to broadcasting organizations, for instance, should be studied carefully at the national level. Finally the proposed instrument should not solely aim at combating piracy as that could undermine the existing level of protection under the Rome Convention.

87. The Delegation of the Russian Federation supported the extension of protection to cable originated transmissions of program -carrying signals, based on its national experience. Cable originated transmissions should be protected independently from traditional broadcasting, and the same protection should be provided as for traditional broadcasting. Each right to be granted should be clearly defined. As to the right of decryption of encrypted broadcasts, it supported the approach to include that right in the obligations concerning technological measures. Finally, protection of broadcasting organizations should not jeopardize the protection of other categories of rightholders.

88. The Delegation of China reiterated its view that broadcasting organizations held a unique position compared with other entities. That was why balance among other rightholders was important. Granting a higher level of protection to broadcasting organizations may upset the balance among the rightholders and therefore should be avoided. With respect to the outstanding issues of the Diplomatic Conference on the Protection of Audiovisual Performances in December 2000, WIPO should play a more active role in solving them. As to the rights to be granted to broadcasting organizations, those that were

already provided for in the Rome Conventions should continue to be applied, and they should be extended to cable or originated transmissions. The right of cable retransmission could be included in the right of rebroadcasting. As concerns the definition of "broadcasting organization," it should include not only those emitting broadcasts over the air, but could include those emitting cable or originated transmissions. The right to be granted to broadcasting organizations should be compatible with their unique functions. The necessity of granting certain rights, such as the rights of distribution and rental of fixations, should be further reconsidered. As to the right of decryption of encrypted broadcasts, it should not be granted as an exclusive right but rather be part of the obligations concerning technological measures as in the WCT and the WPPT. Lastly, if Internet originated real-time streaming was included as the object of protection, any website that provides such service could be entitled to protection under the proposed instrument. An accurate definition of the entities that would be protected under the instrument would be necessary.

89. The Chairman recalled that only materials that were streamed in real time on the Internet were being considered. Materials that were stored in a server and that could be accessed from a place and at a time chosen by the public were not candidates as an object of protection.

90. The Delegation of Tanzania indicated that, although the definition of broadcasting in its Copyright Act of 1999 did not mention transmission of sounds by wire, it did not have any problem if the new instruments should include cable transmission as an object of protection.

91. The Delegation of Singapore stressed that the Committee should focus on creating a balance between the rights of broadcasting organizations and the rights of all other stakeholders involved. Giving enhanced rights to broadcasting organizations should not undermine their rights or interests of other stakeholders. The Delegations supported the intervention by the Delegation of Switzerland, and agreed that the Committee should not broaden the established notions of what was "broadcasting," as that could have an adverse impact on other stakeholders. In that context, the Delegation referred to such rights as making available to the public and retransmission over the Internet, and noted that broadcasting organizations needed to be able to prevent such uses which might occur without their consent. The WCT and the WPPT had granted similar rights to other stakeholders. However, in the current exercise, the Committee should not grant rights at the expense of others.

92. The Chairman said that raising issues about the possible impact of a new treaty on the rightholders protected under other treaties was helpful in clarifying certain issues.

93. The Delegation of Kenya referred to its Copyright Act of December 2001, wherein the term "broadcast" was defined as a transmission, by wire or wireless means, of sounds or images or both or their representation thereof, in such a manner as to cause such images or sounds to be received by the public and include transmission by satellite. Under its law, broadcasting included cable, satellite and traditional means of transmission. The Delegation supported the interventions of Singapore and Switzerland. In respect of encryption, it agreed that the issue of decryption might be better dealt with under technical measures of protection. Regarding the issue of rental rights, the Delegation felt that the issue included the rights of authors and other rightholders, and therefore required caution. Regarding the definition of "broadcasting," the Delegations supported the intervention of the Delegation of Switzerland.

94. The Delegation of India supported the notion that rights granted to broadcasting organizations should not be too sweeping, as the public interest must be factored into the

process of determining those rights. Rights to broadcast in nature could lead to a monopoly situation. Governments had a special responsibility to ensure fair treatment to all beneficiaries, and a balance among all the interested circles. India had huge entertainment, computer software and biotechnology industries; the government was currently conducting consultations with industry to ascertain whether the right balance was. The Delegation supported the intervention by the Delegation of Singapore in respect of the need to achieve a proper balance.

95. The Delegation of Japan pointed out that, in its proposal before the Committee, cable originated broadcasting was not covered. However, the Delegation did not see big problems in the inclusion of cable originated broadcasting as an object, because in its domestic law, re-broadcasting, cable re-transmission and communication to the public were included for protection. It needed further discussion domestically whether or not to extend the rights granted to cable originated broadcasting.

96. The representative of the International Federation of Musicians (FIM) referring to the intervention by the Delegation of Switzerland, noted that, in the WPPT, only rights in respect of phonograms were covered. Using the WPPT as an example of rights could lead to confusions since, for example, it meant that the new instruments should only protect radio broadcasts, since the WPPT only protects performers in audio works. It was surprising that the Swiss Delegation should mention the eventual issue of right to remuneration for private copying in connection with the work on the protection of broadcast signals. Moreover, the opinion of performers was that only the right to remuneration in general should be considered, in other words a "diminished" right compared with the exclusive rights. As far as the right of reproduction was concerned, a distinction should be made between the right of reproduction of an unauthorized fixation (provided for in the Rome Convention) and the right relating to other kinds of reproduction, which was far broader and more problematic in the case of broadcasting organizations. In respect of cable transmissions, he said that the distinction between cable originated transmissions and cable retransmissions was crucial as they were two very different things. He added that the conference room papers should have a third column listing the rightsholders.

97. The Chairman replied that the proposal of the European Community clearly stated that cable retransmission was not broadcasting.

98. The representative of the International Federation of Actors (FIA) supported the intervention by the representative of FIM. In connection with the justification for improving the rights of broadcasting organizations, he stressed the need for balance among the different categories of rightsholders. However, he saw no balance in the Committee's work thus far since the rights of audiovisual performers were not protected, leading to remuneration for certain parties based on the work of others. Broadcasting organizations should not receive new rights so long as the rights of audiovisual performers remained pending.

99. The representative of the Association of European Performers Organisations (AEPO) said that the list of objects and rights in the conference room paper reflected the challenge before the Committee: was it the aim to grant traditional broadcasters protection for new exploitations of their broadcasts due to technical developments, or did technical developments require that new exploitations become themselves an object of protection? He wondered whether an intellectual property regime was the appropriate mechanism to cover such new protection. If new objects of protection were added, it would be impossible to avoid the creation of new categories of beneficiaries. Recognizing new objects of protection under the

heading of rights of broadcasting organizations might create problems in different international instruments, for example, if transmissions would be broadcasting for broadcasting organizations, but not for some other right holders. Performers should be able to count on an equally dynamic and open-minded approach to their own protection, not only for new forms of exploitation, but also for the older but still unprotected uses of their performances.

100. The representative of the American Film Marketing Association (AFMA) suggested that the definition of "transmissions" should be clarified, and referred to the Rome Convention as a starting point for which rights might be included. He preferred that the Committee refer to "deferred re-transmissions" when speaking about "cable retransmissions," which required that the cable operator would have first obtained a license for the content to be transmitted. A broadcast via cable at another time must not be recognized as a cable originated transmission, nor should a cable operator be recognized as a broadcasting organization that would be entitled to the rights of a broadcasting organization.

101. The representative of the European Federation of Joint Management Societies of Producers for Private Audiovisual Copying (EUROCOPYA) stated that there was a general intention to arrive at an appropriate instrument in order to fight against signal piracy. The distinction between cable retransmission and cable originated programs, dealt with in paragraph 23 of the WIPO technical background paper, deserved further discussion. Cable operators had repeatedly argued that TV programs from third parties, injected directly into their networks, are cable originated programs and did not constitute a cable retransmission. Given the importance of that question for right holders it was necessary to further clarify the terms and to attach precise criteria to the definitions of cable originated transmissions and cable retransmission.

102. The representative of the Argentine Association of Performers (AADI) laid stress on the importance of defining the scope of the rights that had to be conferred on broadcasters. Those rights should be limited to emission issues (transmission and retransmission), in other words to the combating of signal piracy. There should be no confusion between those rights and the rights that might accrue to the broadcasters as producers of their own creative programs, as producers of audiovisual works in other words, as it had also to be borne in mind that the matter at issue was the drafting of a possible treaty for the protection of broadcasting organizations, not one on the rights of audiovisual producers. He added that it was necessary to respect the balance between broadcasters and other owners of intellectual rights such as authors, performers and producers of phonograms, and especially those who, as in the case of performers of audiovisual works, continued to be deprived of protection by the treaty that still had not been approved by the WIPO Diplomatic Conference.

103. The representative of the International Confederation of Societies of Authors and Composers (CISAC) indicated that it was important to respect not only a legislative balance but also a commercial balance. The rights of creators and other original contributors should be placed on a level playing field with those of broadcasters. It was strange to discuss the rights of broadcasters without knowing that the rights of audiovisual performers were. That imbalance resulted in especially negative consequences taking into account that limited royalties had to be shared among different right holders.

104. The representative of the *Comité de Actores y Artistas Intérpretes (CSAI)* warned about the absence of clear, well-founded definitions, and also about the forcing involved in accommodating patterns of rights from other instruments, as such, within the proposals for the

regulation of broadcasting organizations. The following conditions needed to be met for the discussion to progress: there had to be (1) full regulation of the whole range of rights of original owners (audiovisual performances), (2) precise demarcation of the subject matter of protection and of the definitions that were supposed to cover the regulation of broadcasters, (3) a study in greater depth of the need to grant each one of the rights claimed and (4) an economic analysis at various levels (national, regional and global), and in market terms, of the effect of regulation that was as ambitious and counter-productive as the one sought. He also placed emphasis on the need to progress with clarity on the content and scope for which there should be copyright protection, with a view to being able to avoidance of immediate conflicts of interest between various owners of rights (with the broadcaster being sometimes a producer and at other times a mere user of the repertoires of others), and also a conflict of governmental jurisdiction in those countries, which were in the majority, in which copyright subject matter was protected by an organization different from the one that controlled broadcasting organizations. It was true that there were new realities and new problems affecting broadcasters which called for new provisions, but the basis for regulation was already evolving in the appropriate environments (telecommunications laws, multidisciplinary standards for the fight against piracy, provision on competition or competence, customary law, etc.).

105. The representative of the Ibero-Latin-American Federation of Performers (FILAIE) indicated that the definition of broadcasting should not interfere with the rights conferred by the WPPT to musical performers. As other performers' organizations had previously indicated, it was necessary to preserve the balance among different right holders on the international level.

106. The representative of the International Federation of the Phonographic Industry (IFPI) stated that it was necessary to maintain the current definition of broadcasting, as included in existing international treaties. Otherwise, disturbing effects could take place in relation to the interpretation of those treaties. One should also keep in mind that in national legislation usually only one single definition of broadcasting existed.

107. The representative of the International Literary and Artistic Association (ALAI) suggested, in response to the previous statement of AFMA, the example that someone fixed a signal without authorization and used it for assembling and transmitting his own broadcast. That person would become a broadcaster irrespective of the illegitimate character of his initial activity and the content transmitted. An unauthorized translation offered as a similar example. In both cases the earlier illegitimate activity of using content without authorization would not prevent either the translator or the person who broadcast original content, before it was changed, from being considered as right holders.

108. The Delegation of Switzerland indicated that its country had defended at several instances the fact that the WPPT should serve as a model for the protection of other right holders. The WIPO Diplomatic Conference on Audiovisual Performances in December 2000 offered the most recent example of that reiterated position. In the search for a complete balance among different right holders, one might explore the possibility of including the question of the rights of audiovisual performers in a future diplomatic conference on the rights of broadcasting organizations. The provisional understanding of the Diplomatic Conference on Audiovisual Performances could serve as a basis for discussion, allowing Member States to concentrate on the few issues where agreement had not yet been reached. The provisions on limitations and exceptions in the WPPT could also serve as a basis for discussion for the future work on the rights of broadcasters. It would depend on national

legislators to develop detailed rules on the limitations to the right of reproduction, including, if they so wished, a remuneration for private copying.

109. The Delegation of Egypt reviewed the different issues on which further discussion was needed, including the definitions, the relation between signal and content and the need for balance among different right holders. In order to tackle those questions, it proposed to establish a working group, made up of legal and technical experts. Alternatively, it suggested allowing non-governmental organizations to make lengthy presentations, explaining in detail the issues where clarification was needed.

110. The Chairman noted that the discussions had showed a far-reaching convergence of views on the need for protection of the first two categories of objects (listed in the conference room paper) at relatively similar levels. The starting point for such protection was the basic rights in the Rome Convention while new additional elements were to be considered. Many agreed on the necessity of granting rights to cable operators. Some delegations questioned the right of rental and the right of distribution of fixations of broadcasts while others were in favor of them. With regard to the right of decryption of encrypted broadcasts, several delegations had preferred that the matter be addressed through technological measures for protection. He introduced the discussion on pre-broadcast signals as objects for protection by proposing that delegations deal first with that item and then with object items (4) and (5) together (of the conference room paper).

111. The Delegation of Japan underscored the importance of protection of pre-broadcast signals since they were sometimes intercepted and transmitted without authorization. It was generally understood that pre-broadcast signals were not broadcasts as protected under related rights since pre-broadcast signals were not transmitted to the public. In order to protect them under related rights, a clear relationship was needed between signals actually sent to the public and pre-broadcast signals. As a possible solution one might protect only those signals that were identical to signals that were actually transmitted to the public. Another option was to strengthen the protection under telecommunication laws. Further discussion on the subject was needed. The Delegation was hesitant about the need to include unconditionally pre-broadcast signals as an object of protection.

112. The Delegation of the Russian Federation supported the need to protect pre-broadcast signals since they were vulnerable, easily intercepted and used by pirates without sanctions. The Delegation proposed to include in the new international instrument a provision concerning the obligation for contracting parties to provide in their national legislation effective rights with corresponding sanctions for anyone who deliberately performed acts which lead to interception and/or unauthorized use of the pre-broadcasting signal. While the Delegation agreed with the possible inclusion of object items (4) and (5) in the new instrument, but noted that they needed to be defined very clearly and the list of rights granted in those cases would need to be carefully analyzed since they possibly could differ substantially from the rights provided to "traditional" broadcasting.

113. The Delegation of Australia stated that it had not yet a position on any particular form of "Rome-plus" protection. It focused on the question whether the proposed object of protection clearly identified the beneficiaries of such protection. Article 13 of the Rome Convention prescribed that the beneficiaries of protection of broadcasts were "broadcasting organizations." The term "organization" covered a broad category of legal entities. If the protected "broadcasting" was to encompass the activities referred to in object items (3), (4) and (5) of the conference room paper, a very wide range of bodies would become covered by

the term “broadcasting organization.” Further, activities related to pre-broadcasting signals could be undertaken by a body that did not itself engage at all in transmission to the public. Previous sessions of the Standing Committee had witnessed opposition to widening the beneficiaries of protection. A question could be raised as to whether a “traditional” broadcaster should be entitled to protection for its broadcasting activities, simply because it also did not engage in pre-broadcasting activities. The Delegation recalled that some interventions had referred to the need for a definition of “broadcasting organization” and the proposal of the Delegation of Argentina contained a requirement of “authorization” by a Contracting Party. In Australia as well as in other countries, licensing or regulating of bodies engaged in transmission to the public was required. The Delegation was interested to hear views on the idea of linking “broadcasting organization” as the beneficiary of protection to authorization for its activities by a contracting party. It seemed that protection could be confined to appropriate candidates engaged in one or more of the activities to be covered by “broadcasting.” With regard to the inclusion of pre-broadcast signals as “broadcasting,” the Delegation was concerned that the transmission at the point of interception was not immediately directed to the public. Thus, the question which arose was whether one could vest intellectual property rights in pre-broadcast signals. That called perhaps for giving broadcasters rights like those established in the Brussels Satellites Convention. With regard to the right of decryption of encrypted broadcasts, the Delegation shared the view expressed by ACT. Recent amendments of the Australian Copyright Act had established a *suigeneris* right of the broadcaster to take civil action against the commercial use of an unauthorized decoder. The Delegation agreed with those who questioned granting to the broadcaster an exclusive right of decryption of its broadcasts.

114. The Delegation of Georgia welcomed the extension of the scope of objects of protection, which took into account new technologies existing alongside traditional ones. The Delegation supported the proposal by Egypt on setting up a working group. He informed the Committee of the Georgian Copyright and Related Rights Act from 2000 and of the accession by the country to various international agreements in the field of copyright and related rights. The Delegation requested the Secretariat to organize a regional conference for the countries of Eastern Europe, Central Asia and the Caucasus on the rights of broadcasting organizations. It also requested a translation of the studies on the protection of non-original databases into Russian.

115. The Delegation of the European Community referred to its proposal, the starting point of which was the fact that the object of protection was broadcasting, irrespective of the technical means or the medium used. This was valid also in regard to objects (4) and (5) in the conference room paper. Transmitting pre-broadcast signals was not broadcasting and would normally fall outside of the scope of the future treaty. However, the fact that pre-broadcast signals was reported to be a serious problem as it set pre-conditions for piracy. Therefore, some form of protection was appropriate and that was the reasoning behind Article 10 of the proposal of the European Community. If one followed this logic, broadcasters needed protection of their pre-broadcast signals against all acts mentioned in rights items (1), (2), (3), (5), (6), (7), (8) and (10) of the conference room paper. Several questions still remained open – what kind of protection was needed and appropriate in addition to existing telecommunication laws; how could a spillover into regulating point-to-point transmissions or granting them protection be avoided. Article 10 of the Delegation’s proposal offered a flexible approach to the issues requiring “appropriate legal protection,” but not necessarily exclusive rights. If protection for pre-broadcast signals existed, the right of decryption could become obsolete.

116. The Delegation of Cameroon informed the Committee that its Government was supportive of including Internet-originated real-time streaming in the scope of protection of the new instrument, as it did not differ basically from traditional transmissions since the mode of transmission was irrelevant. The work undertaken by the Standing Committee had the important task of filling the gaps of the Rome Convention which was signed at a time when the Internet did not exist. Any refusal to extend the object of protection to cover the new medium of the Internet would soon necessitate updating of the new instrument. Filling the gaps, however, needed to be objectively done.

117. The Delegation of Canada informed the Committee that it had not yet taken a formal position on the need of including object items (4) and (5) of the conference room paper in the scope of protection. Streaming in real time over the Internet was a widespread phenomenon and it might be inappropriate to give broadcasting rights to a large group of entities where there might not be any particular effort with respect to the program and its content. If Internet-originated real-time streaming were to be protected, it would be particularly important to consider a definition of "broadcasting organization" or a requirement with respect to the selection, arrangement or investment in the content.

118. The Delegation of Japan was of the view that the new instruments should focus on traditional broadcasting. There was no strong domestic request for protecting real-time streaming in Japan. Since the rights of other copyright holders were well established, then a treaty had to deal with the rights of traditional broadcasting organizations. While recognizing the importance of real-time streaming, it was difficult to draw a clear line between certain protected streaming and non-protected individual-based streaming. Object items (4) and (5) of the conference room papers should be dealt with separately from the debate on the new instrument.

119. The Delegation of Ireland stated that if separate treatment was granted for real-time streaming as opposed to traditional broadcasting, it could create a situation where substantially equal activities would be treated in an unequal manner. Its Government had not formed a definite position on the issue, but the possibility of recognizing at the international level organizations which already had a status at the national level could be further discussed.

120. The Chairman pointed out that the principle of technological neutrality had been followed until now and was a useful principle.

121. The Delegation of the United States of America recalled that unlike the world of conventional over-the-air broadcasting, based on limited spectrum which had been the justification for the regulation of broadcasting activities, this did not apply to the Internet which largely was an unregulated phenomenon. The establishment of criteria that would reserve protection only for those organizations regulated by a broadcasting authority would exclude Internet activities from the scope of the new treaty, with the possible exception of real-time streaming performed by traditional broadcasting organizations. Internet activities were practiced by individuals and a possible regulation of the ability to communicate via that medium could in some countries, such as the United States of America, create constitutional problems.

122. The Delegation of Ireland pointed out that it would further reflect on the statement made by the Delegation of the United States of America and underlined that the lawfulness of treating "unequals-equally and equals-unequally" had been addressed in a judgement of the Irish Superior Court.

123. The Chairmannotedthatanumberofissuescouldbefurtherclarified,suchas,for instance,thepracticeofreal -timestreaming,thetechnical characteristics of on -demanduses andthemakingavailable.

124. TheDelegationoftheUnitedKingdomstatedthatithadnotreachedadefiniteposition ontheissue,butthatithadperceivedatendencytokeepthescopeofthenewinstrument outsidethescopeoftraditionalwirelessbroadcasting.Asuggestionhadbeenmadetodrawa linktotheauthorizationofbroadcastingorganizationsunderbroadcastinglaw.Theproblem was,however,thatnoharmonizationofrequirementsforauthorization undernational broadcastinglawsexisted,anditwasdifficulttolearnaboutthestandardsusedacrossthe world.Ifreal -timestreamingwouldbeincludedinthescopethatcould increasethenumberofbeneficiariesofprotection, butthatwasnotanunusualsituation,it existedinparticularinthefilmindustrywheretherewereveryfewbigproducersandvery manysmallones,includingindividuals.ThustheDelegationquestionedwhetherthematter ofauthorizationcouldbeagoverningfactorwhendecidinguponthescopeofprotection.

125. TherepresentativeoftheEuropeanBroadcastingUnion(EBU)referredtothepossible protectionofpre -broadcastsignalsandindicatedthatbroadcasterswereconcernedhow injunctions couldbeinitiatedinordertopreventdamage.Unlessbroadcasterscouldtake immediateactioninthecourtstoobtainpreliminaryinjunctivereliefandpreventthe unauthorizeduseoftheirsignals,theywouldbeharmedbysuchacts,botheconomicallyand d interms oftheirimage.Unlessthepre -broadcastsignalwasincludedasarelatedright, piratescouldcircumventtheprotection.Broadcastpiracycouldnotbemadeeasierthan invitingpiratestostealtheprebroadcastsignalratherthanthebroadcast itself,orbyimposing onthevictimofpiracytheburdenofproofastowhichofthetwosignals hadbeenpirated. Theprotections shouldnotbelimitedbyrequiringthattheactualbroadcastbesimultaneousto thepre -broadcasttransmission.TheBrussels1974SatellitesConventionaddressedtheissue ofprotectionofpre -broadcastprogramcarrying signals.However,thespecificrightfor broadcasterstotakedirection,particularlybymeansofanexclusiveright,wasonlyoneof thepossiblemeans envisagedforimplementationoftheConvention.Anothermeans envisagedwastelecommunicationslaw,butinthatcase,onlythetelecommunications authoritycouldtakeactionagainstanothertelecommunicationsauthoritythroughthe protectionofthesecrecyoftelecommunications,andthatwasnotsufficienttostoppiracy.

126. ArepresentativeoftheNationalAssociationofBroadcastersJapan(NABJapan)agreed withtheDelegationofJapan.Broadcasterswereincreasinglyinvolvedinreal -time streaming activities,butthisorganizationwasoftheviewthatatthepresentstage,real -timestreaming hadtobeexcludedfromthescopeofthenewinstrument.Fromthetechnicalpointofview, Internettransmissionswereinteractive transmissionofa naturedifferentfrombroadcasting, whichwasaone -waytransmission.Ifprotectionwasgrantedto real -timestreamingactivities, definitionsofconceptssuchasInternettransmissions,andwebcastingwouldhavetobe providedwiththeriskthatthosedefinitionswouldberapidlyoutdatedbecauseoftherapid paceoftechnologicaldevelopments.

127. Therepresentativeofthe *Associationlittéraireetartistiqueinternationale* (ALAI) referredtotheinterventionoftheDelegationofCameroon.Theobjectsofprotection mentionedintheconferenceroompapercouldbecomeobsoleteinviewofthetechnological developmentsandtheprocedurefollowedbytheCommitteewastoomuchtechnologybound whereasitshouldformulatebroadcastingin an abstract technologyneutralway.Such a methodologywaspossiblewithrespecttotheobjectsofprotection.Broadcasterscouldnot beconfinedanymoretoorganizationsthathadbeenrecognizedassuchbystates.The

proposals submitted by the Delegation of Argentina referred to that criterion, but it had to be considered obsolete. The issue at stake was not any more the issue of a few recognized organizations. The closed club of broadcasters was now wide open to active Internet users who performed activities that could be called broadcasting. The matter in discussion had become a matter for all active Internet users and its effect was to widen the scope of the future treaty.

128. The representative of the Association of Commercial Televisions in Europe (ACT) was of the opinion that a possible definition of broadcasting organizations in relation to their authorization would raise issues relating to conflict of laws. The standard approach in copyright treaties was referred to in Article 5(2) of the Berne Convention and was governed by the law of the country where protection was claimed. He wondered whether the authorization requirements applicable to broadcasting organizations referred to the requirements of the country where protection was claimed or to the requirements of the country where the broadcasting organization was established. Such requirements had not yet been harmonized and that was not the Committee's task.

129. The representative of the National Association of Broadcasters (NAB) referring to the issue of decryption of encrypted broadcasts, stated that such a right was unnecessary because technological measures of protection were sufficient and because technological measures of protection, as designed in the WPPT, applied only to substantive rights and reception was not a substantive right. A decryption right was indispensable for broadcasters to fight against the unauthorized sale and distribution of black boxes that could be used to pick up encrypted signals, and that applied not only to the pre-broadcast signal but also to the main signal. His organization was of the opinion that the protection of pre-broadcast signals should not be limited to the simultaneous sending of the pre-broadcast signal and to the broadcast of that signal but should also cover the situation where pre-broadcast signals were being sent in digital format even though the ultimate broadcast signal would still be sent out in analogue format. Piracy of that digital format could be very damaging both for the signal and the content. Pre-broadcast signals in digital format often did not include any commercials. The pirate would thus be able to add its own local commercials before retransmission. With regard to the objects of protection, his organization was concerned that the inclusion of new objects of protection could delay the outcome of the negotiation in favor of the protection of traditional broadcasters.

130. The representative of the International Federation of Musicians (FIM) referred to the statement made by the ALA representative who considered including in the scope of protection all active web users. People involved in web activities used produced material, i.e., works created by others, and similarities could thus be drawn with pirate broadcasts. Public policy privileges such as compulsory licenses or ephemeral recording exceptions, had been accorded to traditional broadcasters and his organization wondered how such concepts would be addressed if the scope of protection was broadened to include such Internet entities.

131. The Chairman noted that it seemed to be a widely shared opinion that the pre-broadcast signals must be protected when granting rights to broadcasting organizations. What should be done was also to consider solutions other than exclusive rights, but which would have similar effects, namely, those granted under telecommunications legislation.

## OTHER ISSUES

132. The Delegation of Mexico proposed that the Secretariat prepare studies regarding the following issues: representatives of Internet service providers, applicable law in respect of international infringement of copyright and related rights, voluntary copyright registration systems and resale rights.

133. The Delegation of Nicaragua seconded the previous statement regarding the consideration of topics concerning voluntary copyright registration system, as well as the responsibilities of Internet service providers.

134. The Delegation of Hungary believed that WIPO should address the issues of the authorizing of the making of and the protection of multimedia products. There was general agreement that those productions were protected by copyright, but views differed as to under which category of work they might fit appropriately. The two most frequent positions in this respect were to qualify them as either collections or audiovisual works, but international and national norms differed in respect of original ownership and the scope of rights, among others. Thus, it would like the Committee to study the question of ownership of multimedia products. Another issue concerning such products was the authorization needed, which had close connection with collective management issues that were in themselves a major issue. Finally, it supported addressing issues relating to private international law, such as the choice of forum and the choice of law, as they specifically emerged in the field of copyright and related rights.

135. The Delegation of Spain, representing the European Community, commended the Chairman for the opportunity provided of contributing to the work of the Committee by suggesting subjects that could be investigated by the Secretariat General with a view to later consideration by the Standing Committee. In that respect it subscribed to the position taken by the delegation that had taken the floor before it on the appropriateness of engaging in some discussion of characteristics; it considered that the topics proposed were largely a reflection of the questions that tended to arise in intellectual property, and to which some thought should be given in the future, but it recognized at the same time that the subjects put forward amounted only to a tentative list and that the reflection that States would engage in over the next few months would produce additional subjects of interest, such as that of the resale royalty right when works of three-dimensional art were sold, and others. It therefore wished to use the present intervention as an opportunity to mention the agreement between the Member States of the European Union that they would consider the question carefully and, in anticipation of the future sessions of the Committee to take place during November, would soon be in a position to make a constructive proposal on the topic to be considered and on the approaches that could be adopted.

136. The Delegation of the Russian Federation supported the previous proposals. The development of the Internet required that many issues be dealt with. It proposed as subjects digital rights management and the problem of establishing ownership in the digital environment.

137. The Delegation of Japan found that the proposal of having new issues considered in the future by the Committee very useful. Such new subjects should, however, not necessarily lead to the establishment of new international instruments. It asked for flexibility when discussing possible new topics which, after thorough consideration, could be added to, or deleted from the future agenda of the SCCR. For that purpose, the WIPO Digital Agenda was

a good reference. Priorities had to be established as there were many proposals. It proposed that the priorities among subjects be examined at the next session of the SCCR.

138. The Delegation of Egypt said that all the subjects proposed deserved to be studied. He proposed that a list be made for consideration at the next session of the Committee.

139. The Delegation of Singapore recommended considering issues regarding the implementation of the WCT and WPPT, particularly regarding those dealing with technological measures, rights management information and fair use and exceptions. It described briefly the fair use issues which were being discussed in its country.

140. The Delegation of the United States of America proposed to add to the list of possible issues the topic of the economic of copyright. The consideration of that issue would help countries to understand the specific value and impact of copyright and related rights in national economies. It supported the proposal of the Japanese Delegation regarding the need to prioritize, as addressing all the issues would be very difficult. Also, it agreed with the Delegation of Hungary to tackle the issues of ownership of multimedia works and collective management. It said that the issues of technological measures and digital rights management could have higher priority.

141. The Delegation of Sudan proposed that the issue on collective management of copyright and related rights, as well as issues of copyright protection of folklore, be under consideration by the Committee.

142. The Delegation of Pakistan said that its country had made efforts with the assistance of WIPO in developing a collective management system. With the help of WIPO, three persons had gone on a study visit abroad to see the work of other collecting societies. Its country would appreciate more support from WIPO in this respect through generating greater public support for the system which was beneficial to performers. Pakistan was willing to cooperate in this field. Thus, the matter of collective management of rights should be given importance in the future work of the Standing Committee.

143. The representative of the World Blind Union (WBU) welcomed the consideration of other issues by the SCCR. The topic of fair use in copyright and related rights deserved special attention. Consumers such as libraries, schools and disabled persons, such as the visually-impaired, had an equally valid interest in having access to protected material. He reminded the Committee that some national legislation in developing countries did not include exceptions to copyright and related rights to facilitate blind people's access to work. He asked WIPO to include that aspect in its legislative advice to developing countries. Also, material in electronic form could easily be transferred between different countries, but that was not possible for legal reasons. That meant unnecessary duplication of work. Another issue was the application of technological measures of protection that hindered the digital modification of content to make it accessible for disabled persons. He asked for WIPO's support in studying these issues.

144. The representative of the European Bureau of Library, Information and Documentation Associations (EBLIDA) said that libraries, as users and custodians of culture, heritage and information, should continue to enjoy certain rights of access to information in the digital environment, especially for library users.

145. The Chairman pointed out that the preparation of a list of all the new issues proposed for future review and action by the Committee would be very helpful. The Committee could then, on the basis of that list, decide which issues could be studied, others discussed in the Committee or, for instance, these seminars organized in conjunction with the Committee's meetings. The Committee would have time to consider that list at its next session and determine its priority, urgency and method of work.

146. The Standing Committee took note that an information meeting on the technical and legal issues relevant to broadcasting and Internet real-time streaming would be organized by the Secretariat in conjunction with the next session of the SCCR.

*147. The Standing Committee made the following decisions:*

*(a) Databases: the issue would be carried forward to the Agenda of the next session (eighth) of the Standing Committee.*

*(b) Rights of Broadcasters: (i) the issue would be the main point on the Agenda of the next session of the Standing Committee; (ii) the Governments and the European Community are invited to submit additional proposals on this issue, preferably in treaty language, to be received by the Secretariat on or before September 16, 2002; (iii) a working paper based on document CRP/SCCR/7/1 Rev.2 and on the discussions of the present session of the SCCR, with a description of the generally accepted terms, would be prepared by the Secretariat, in consultation with the Chairman of the present session; (iv) the next session of the SCCR would take place from November 4 to 8, 2002.*

*(c) Requested the Secretariat to prepare a list of the subjects proposed, with a short description of each subject, for its consideration at the next session of the Committee.*

#### ADOPTION OF THE REPORT

*148. The Standing Committee unanimously adopted this report.*

149. The Chairman closed the session.

[Annex follows]

ANNEXE/ANNEX

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

I. MEMBRES/MEMBERS

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JoeBRADLEY,SecondSecretary,PermanentMission,Geneva

SINGAPORE

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SOUDAN/SUDAN

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NationalIntellectualPropertyOfficeofSriLanka,Colombo

SUÈDE/SWEDEN

Henry OLSSON, Special Government Adviser, Ministry of Justice, Stockholm

SUISSE/SWITZERLAND

Carlo GOVONI, chef, Division du droit d'auteur et des droits voisins, Institut fédéral de la propriété intellectuelle, Berne

THAÏLANDE/THAILAND

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Chumpichai SUASTI -XUTO, Counsellor, Permanent Mission, Geneva

TUNISIE/TUNISIA

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Ben Abdenahmene Sihem BOUAZZA, chargé des Affaires juridiques, Établissement de la radiodiffusion télévisuelle tunisienne (ERTT), Tunis

VENEZUELA

Virginia PÉREZ PÉREZ (Srta.), Primer Secretario, Misión Permanente, Ginebra

COMMUNAUTÉ EUROPÉENNE (CE)/EUROPEAN COMMUNITY (EC)

Jörg REINBOTHE, Head of Unit E -3 Copyright Unit, Directorate General (DG) Internal Market, Brussels

Rogier WEZENBEEK, Administrator, Unit E -3 Copyright Unit, Directorate General (DG) Internal Market, Brussels

II. ORGANISATIONS INTERGOUVERNEMENTALES/  
INTERGOVERNMENTAL ORGANIZATIONS

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

Émile GLÉLÉ, juriste, spécialiste de programme, Section de l'entreprise culturelle et du droit  
d'auteur, Paris

ORGANISATION MÉTÉOROLOGIQUE MONDIALE (OMM)/WORLD  
METEOROLOGICAL ORGANIZATION (WMO)

Iwona RUMMEL -BULSKA (Mrs.), Legal Adviser, Geneva

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

Hannu WAGER, Counsellor, Intellectual Property Division, Geneva

LIGUE DES ÉTATS ARABES (LEA)/LEAGUE OF ARAB STATES (LAS)

Mohamed Lamine MOUAKIBENANI, conseiller, Délégation permanente, Genève

ORGANISATION INTERNATIONALE DE LA FRANCOPHONIE (OIF)

Sandra COULIBALY LEROY (Mme), observateur permanent adjoint, Délégation  
permanente, Genève

III. ORGANISATIONS NON GOUVERNEMENTALES/  
NON-GOVERNMENTAL ORGANIZATIONS

Agence pour la protection des programmes)/Agency for the Protection of Programs (APP) :  
Didier Jean ADDA (conseiller, Comité exécutif, Paris)

American Film Marketing Association (AFMA) : Lawrence SAFIR (Chairman (AFMA  
Europe), London)

Asociación Internacional de Radiodifusión (AIR)/International Association of Broadcasting  
(IAB) : Alexandre JOBIM (Legal Adviser, Brasilia)

Association argentine des artistes interprètes (AADI)/Argentine Association of Performers (AADI): Saenz Paz GUSTAVO (Director General, Buenos Aires); Hilda RETONDO (Sra.) (Departamento Legal, Buenos Aires)

Association canadienne de télévision par câble (ACTC)/Canadian Cable Television Association (CCTA): Jay KERR - WILSON (Counsel, Ottawa)

Association des organisations européennes d'artistes interprètes (AEPO)/Association of European Performers' Organisations (AEPO): Xavier BLANC (Bruxelles); Cecilia DE MOOR (Mme) (Bruxelles)

Association des télévisions commerciales européennes (ACT)/Association of Commercial Television in Europe (ACT): Tom RIVERS (Adviser, London)

Association littéraire et artistique internationale (ALAI)/International Literary and Artistic Association (ALAI): Herman COHENJEHORAM (Comité exécutif, Amsterdam)

Association nationale des organismes de radiodiffusion (NAB)/National Association of Broadcasters (NAB): Benjamin F. P. IVINS (Senior Associate General Counsel, Washington, D.C.)

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

Comité de Actores y Artistas Intérpretes (CSAI): Abel MARTÍN (Jurista, Madrid)

Confédération internationale des éditeurs de musique (CIEM)/International Confederation of Music Publishers (ICMP): Jenny VACHER - DESVERNAIS (Mme) (directrice, Paris)

Confédération internationale des sociétés d'auteurs et compositeurs (CISAC) / International Confederation of Societies of Authors and Composers (CISAC): David UWEMEDIMO (Head, Legal Affairs, Paris); Willem WANROOIJ (Public Affairs Officer, BIEM/BUMA - STEMRA, The Hague); Fabienne HERENBERG (Mme) (Département international, SACE M, Paris)

Copyright Research and Information Center (CRIC): Samuel Shu MASUYAMA (Legal Expert, Director, Legal and Research Department, Center for Performers' Rights Administration (CPRA), Japan Council of Performers' Organization (GEIDANKYO), Tokyo)

Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA) \_\_\_\_\_ :  
Miguel Ángel BENZAL (General Manager, Madrid); José A. SUÁREZ (Madrid)

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

Fédération ibéro-latino-américaine des artistes interprètes ou exécutants (FIL AIE) /  
Ibero-Latin-American Federation of Performers (FIL AIE) \_\_\_\_\_ : Luis COBOS PAVÓN  
(Presidente, Madrid); Miguel PÉREZ SOLÍS (Asesor Legal, Madrid);  
Paloma LÓPEZ PELAEZ (Sra.) (Asesora Jurídica, Madrid)

Fédération internationale de l'industrie phonographique (IFPI) / International Federation of the  
Phonographic Industry (IFPI) \_\_\_\_\_ : Maria MARTÍN PRAT (Ms.) (Deputy General Counsel,  
Director of Legal Policy, London); Lauri RECHARDT (Senior Legal Adviser, Legal Policy  
Department, London); Ute DECKER (Ms.) (Senior Legal Adviser, Legal Policy Department,  
London); Albert PASTORE (Legal Adviser, Legal Policy Department, London); Richard  
GOOCH, (Senior Technology Advisor, London)

Fédération internationale des acteurs (FIA) / International Federation of Actors (FIA) \_\_\_\_\_ :  
Dominick LUQUER (secrétaire général, Londres)

Fédération internationale des associations de producteurs de films (FIAPF) / International  
Federation of Film Producers Associations (FIAPF) \_\_\_\_\_ : André CHAUBEAU (directeur général,  
Paris); Déborah BOULANGER (Mlle ) (juriste, Paris); John BARRACK (General Counsel,  
Toronto); Santiago MEDIANO (Head, Legal Department, Madrid)

Fédération internationale des musiciens (FIM) / International Federation of Musicians (FIM) \_\_\_\_\_ :  
Jean VINCENT (General Secretary, Paris); John MORTON (President, Paris)

Groupement européen des sociétés de gestion des droits des artistes interprètes / European  
Group Representing Organizations for the Collective Administration of Performers' Rights  
(ARTIS GEIE) \_\_\_\_\_ : Francesca GRECO (Mme) (directeur, Bruxelles)

Institute for African Development (INADEV) \_\_\_\_\_ : Paul KURUK (Representative of INADEV in  
the United States of America, Alabama)

Institut Max-Planck de droit étranger et international en matière de brevets, de droit d'auteur  
et de la concurrence (MP I) / Max-Planck-Institute for Foreign and International Patent,  
Copyright and Competition Law (MPI) \_\_\_\_\_ : Silke VON LEWINSKI (Ms.) (Head of Department,  
International Law, Munich, Germany)

International Video Federation (IVF) : Shira PERLMUTTER (Ms.) (AOL Time Warner, New York); Ted SHAPIRO (Legal Adviser, Brussels)

Japan Electronics and Information Technology Industries Association (JEITA) : Yasumasa NODA (Advisor to President, Tokyo)

National Association of Commercial Broadcasters in Japan (NAB -Japan): Shinichi UEHARA (Director, Copyright Division, Asahi Broadcasting Corp. (ABC), Osaka); Masataka KOBAYASHI (Copyright Division, Nippon Television Network Corp. (NTV), Tokyo); Masanori KITAGAWA (Supervisor, Contract and Copyright Department, Content Business Division, Asahi National Broadcasting Co., Ltd., (TV Asahi), Tokyo); Fuyuko KITA (Miss) (Rights Administration, Fuji Television Network Inc., Tokyo); Hidetoshi KATO (Program Contract Department, Television Tokyo, Channel 12 Ltd. (TV Tokyo), Tokyo); Atsushi YABUOKA (Copyright Division, Kansai Telecasting Corp. (KTV), Osaka); Honoo TAJIMA (Deputy Director, Copyright Division, The National Association of Commercial Broadcasters in Japan (NAB -Japan), Tokyo); Kazue HOLST-ANDERSEN (Mrs.) (Consultant Interpreter, Tokyo); Nana OYAMADA-BISCEGLIA (Mrs.) (Consultant Interpreter, Marcogny, France)

North American Broadcasters Association (NABA) : Erica REDLER (Ms.) (Chair, Legal Committee; General Counsel, Canadian Association of Broadcasters (CAB), Ottawa)

Organización Iberoamericana de Derechos de Autor (LATINAUTOR) : Carlos A. FERNÁNDEZ BALLESTEROS (Secretario General, Montevideo)

Performing Arts Employers Associations League Europe (PEARLE\*) : Anne-Marie BALET (Mme) (déléguée, Bruxelles)

Software Information Center (SOFTIC) : Yuichi EGUCHI (Researcher, Research Section, Tokyo)

Union der Radiodiffusion Asie -Pacifique (URAP)/Asia -Pacific Broadcasting Union (ABU) : Maloli MANALASTAS (Mrs.) (Chairperson, Copyright Working Party; Vice-President, Government Affairs, ABS -CBN Broadcasting Corporation, Manila); Jim THOMSON (Vice -Chairperson, Copyright Working Party; Office Solicitor, TVNZ -New Zealand); Ryohei ISHII (Member, Copyright Working Party; Associate Director, Copyright and Contract Division, NHK -Japan, Tokyo); Yoshinori NAITO (Member, Copyright Working Party; Copyright and Contract Division, NHK -Japan, Tokyo)

Unioneuropeennederradio -télévision (UER)/European Broadcasting Union (EBU) : Moira BURNETT (Ms.) (Legal Adviser, Legal Department, Geneva); Heijo RUIJSENAARS (Legal Adviser, Legal Department, Geneva)

Union internationale des confédérations de l'industrie et des employeurs d'Europe (UNICE)/  
Union of Industrial and Employers' Confederation of Europe (UNICE) : Brigitte LINDNER  
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Union internationale des éditeurs (UIE)/International Publishers Association (IPA) :  
Benoît MÜLLER (Secretary General, Geneva); Carlo SCOLLOLA VIZZARI (Legal  
Counsel, Geneva)

Union mondiale des aveugles (WBU)/World Blind Union (WBU) : David MANN  
(Campaigns Officer, Belfast); Marilyn OLDERSHAW (Ms.) (Copyright Officer,  
Peterborough, United Kingdom)

Union Network International – Media and Entertainment International (UNI – MEI):  
John McLEAN (Executive Director, Writers Guild of America, Los Angeles);  
Johannes STUDINGER (Deputy Director, Brussels)

World Association for Small and Medium Enterprises (WASME) :  
Ahmed Rifaat KHAFAGY (conseiller juridique, Banque nationale de développement,  
Le Caire)

#### IV. BUREAU/OFFICERS

Président/Chairman: Jukka LIEDES (Finlande/Finland)  
Vice-présidents/Vice-Chairmen: SHEN Rengan (Chine/China)  
PEIRETTI Graciela Honoria (Mrs.) (Argentine/Argentina)  
Secrétaire/Secretary: Jørgen BLOMQVIST (OMPI/WIPO)

#### V. SECRETARIAT DE L'ORGANISATION MONDIALE DE LA PROPRIÉTÉ INTELLECTUELLE (OMPI)/ SECRETARIAT OF THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Geoffrey YU, sous-directeur général, Secteur du droit d'auteur et droits connexes/  
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