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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

**STANDING COMMITTEE ON COPYRIGHT
AND RELATED RIGHTS**

Eighth Session
Geneva, November 4 to 8, 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 eighth session in Geneva from November 4 to 8, 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: Algeria, Argentina, Armenia, Australia, Austria, Barbados, Belarus, Belgium, Benin, Bolivia, Brazil, Bulgaria, Cameroon, Canada, China, Colombia, Costa Rica, Côte d’Ivoire, Croatia, Cuba, Czech Republic, Denmark, Dominican Republic, Egypt, El Salvador, Ecuador, Eritrea, Fiji, Finland, France, Germany, Ghana, Greece, Guatemala, Honduras, Hungary, India, Indonesia, Ireland, Italy, Japan, Kenya, Latvia, Lebanon, Luxembourg, Malawi, Malta, Mexico, Morocco, Netherlands, Nigeria, Norway, Oman, Pakistan, Panama, Peru, Philippines, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saint Lucia, Saudi Arabia, Senegal, Singapore, Slovakia, Slovenia, Spain, Sudan, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Republic of Tanzania, United Kingdom, United States of America, Uruguay, Venezuela, Viet Nam and Zimbabwe (84).

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: International Labor Office (ILO), United Nations Educational, Scientific and Cultural Organization (UNESCO), *Organisation internationale de la francophonie* (OIF), World Trade Organization (WTO), League of Arab States (LAS) and Arab States Broadcasting Union (ASBU) (6).

5. Representatives of the following non-governmental organizations took part in the meeting as observers: *Associação Brasileira de Emisoras de Rádio e Televisão (ABERT)*, *Associação Brasileira de Propriedade Intelectual (ABPI)*, Asia-Pacific Broadcasting Union (ABU), Association of Commercial Television in Europe (ACT), Association of European Performers Organisations (AEPO), International Literary and Artistic Association (ALAI), International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), Caribbean Broadcasting Union (CBU), Canadian Cable Television Association (CCTA), International Confederation of Societies of Authors and Composers (CISAC), Copyright Research and Information Center (CRIC), Digital Media Association (DiMA), European Broadcasting Union (EBU), European Bureau of Library, Information and Documentation Associations (EBLIDA), European Cable Communications Association (ECCA), European Federation of Joint Management Societies of Producers for Private Audiovisual Copying (EUROCOPYA), European Visual Artists (EVA), Ibero-Latin American Federation of Performers (FILAIE), International Federation of Actors (FIA), *Fédération internationale des associations de distributeurs de films* (FIAD), International Federation of Film Producers Associations (FIAPF), International Federation of Musicians (FIM), European Group Representing Organizations for the Collective Administration of Performers’ Rights (ARTISGEIE), International Chamber of Commerce (ICC), International Confederation of Music Publishers (ICMP), International Federation of Journalists (IFJ), International Federation of the Phonographic Industry (IFPI), Inter-American Copyright Institute (IIDA), International Intellectual Property Alliance (IIPA), International Music Managers Forum (IMMF), International Publishers Association (IPA), International Video Federation (IVF), Japan Electronics and Information Technology Industries Association (JEITA), Max-Planck-Institut für 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), Union of Industrial and Employers' Confederations of Europe (UNICE), Union Network International -Media and Entertainment International (UNI -MEI) and World Blind Union (WBU) (40).

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. He also expressed the Secretariat's appreciation for the effective conduct of the Information Meeting on Technical and Legal Aspects of Broadcasting by Ms. Ieva Platpere, Head, Copyright and Neighboring Rights Division, Ministry of Culture of Latvia, and thanked the Members of the Committee for their participation in that meeting, as well as the speakers who had made useful and informative presentations.

ELECTION OF OFFICERS

7. 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

8. 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/8/1) was unanimously adopted.

PROTECTION OF NON-ORIGINAL DATABASES

9. The Chairman noted that, document SCCR/8/3 was an updated survey of existing national and regional legislation concerning intellectual property in databases carried out following the request made by some countries at the seventh session of the Standing Committee. A study concerning the economic impact of the protection of non-original databases in the Latin American and Caribbean region had also been commissioned in addition to the five existing ones submitted at the last session of the Standing Committee.

10. The Secretariat confirmed that two documents had been made available to the Committee. The first one (document SCCR/8/3) was available in three languages. The second one (document SCCR/8/6) was available only in Spanish, French and English versions of the said document would be available in due course. Furthermore, a submission on the legal protection of databases received from the European Community and its member States on November 4, 2002, would be distributed (English version only) during the current session with French and Spanish versions to follow.

11. The Chairman invited delegations to report on national or regional developments.

12. The Delegation of Barbados, on behalf of the Group of Latin American and Caribbean Countries (GRULAC), thanked the Secretariat for the documentation provided and welcomed the completion of the study relating to the Caribbean and Latin American countries which would help to further the debate. The Group had not been able to analyze it in depth, as it had

not been circulated sufficiently in advance or in all the working languages and therefore GRULAC reserved its views until the next session of the Committee.

13. The Delegation of the European Community introduced its submission on the legal protection of databases in document SCCR/8/8. The submission reiterated that electronic databases had become indispensable platforms for the distribution of content with the advent of digital services in the information society. Databases, which were not sufficiently creative to be categorized as works, should, under certain conditions, enjoy intellectual property protection so that the potential of intellectual property rights could be used for job creation, growth, prosperity and for the dissemination of information and know-how. Intellectual property protection was the appropriate mechanism for the distribution of quality content on appropriate terms as it would promote innovation and investment in information products and help develop a market for databases. Such protection provided the incentive for dissemination of a large variety of new on-line and off-line compilations, many of which had an important cultural dimension, and databases on folklore or traditional knowledge were examples of such a cultural link. The Database Directive adopted by the European Community in March 1996 followed a two-tiered approach – original and creative databases enjoyed copyright protection as literary works while other databases would enjoy, under certain conditions, intellectual property protection in the form of a *suigeneris* right, notably if they were made with substantial investment. In 1997 the European Community had already submitted one document (DB/IM/3 add.) and in 1998 another document (SCCR/1/INF/2). The member States of the European Community had already transposed the Directive into their national legislation and also acquired considerable positive experience with the functioning of the *suigeneris* right. Firstly, the protection had fulfilled the economic expectations as the databases market in the European Community was prosperous and healthy. Secondly, the application in practice of this protection had demonstrated that the protection was operational in the markets and courts had shown their ability to address the issues arising under the Directive such as the interpretation of terms like substantial investment, substantial part of the content or substantial new investment. The application in practice of the right had further demonstrated that protection did not interfere with research or the exchange of information. In terms of the efforts for international protection the Delegation recalled that the debate had started in the mid 1990s. A concrete result of the discussions was that in the run-up to the Diplomatic Conference of 1996, a basic proposal for “The Substantive Provisions of the Treaty on Intellectual Property in respect of Databases” had been prepared. A treaty, however, had not yet been adopted. The Delegation expressed its appreciation of the work undertaken by WIPO on updating the existing documentation on the legal protection of databases in different countries. The studies on the economic impact of database protection commissioned by the WIPO Secretariat had also been studied with interest. Those studies amply demonstrated that database protection was a global issue and that a common approach was needed for the protection of databases at international level. Time was ripe for reactivating discussions on this topic. The submission of document SCCR/8/8 was designed to contribute to those discussions and to share the unique experiences of the European Community member States. Before any future topics should be tackled by WIPO, another effort was needed to successfully conclude the work on these so-called “unfinished business,” namely the protection of databases.

14. The Delegation of Bulgaria, referring to document SCCR/8/3 summarizing national laws containing provisions on protection of non-original databases, informed the Committee that the recent amendments to the Bulgarian Copyright and Neighboring Rights Law, introduced in the summer of 2002, had brought it in line with the European Community Directive 96/9 on the Protection of Databases, as well as European Community Directive

2001/29 on Copyright and Related Rights in the Information Society. The new chapter in the law, entitled "Rights of Database Authors," contained amendments which would come into force on January 1, 2003. In that way, adequate protection would be provided to non-original databases. The Delegation proposed that the list of national laws in document SCCR/8/3 be modified by adding Bulgaria.

15. The representative of the International Publishers Association (IPA) commended the European Community for its most useful submission, recalling the *ratio legis* for protecting non-original databases. The studies commissioned by the WIPO Secretariat on the economic impact of database protection in various regions, as well as the document updating existing national and regional legislation and case law on the issue, were considered useful and timely. As makers and users of databases, publishers were confident that international protection of databases was feasible, taking into account the specifics of regional and national legal systems. The discussions on an international instrument on the protection of non-original databases initiated already before the Diplomatic Conference of 1996 needed to be continued in the framework of the Standing Committee.

PROTECTION OF THE RIGHTS OF BROADCASTING ORGANIZATIONS

16. The Chairman introduced the issue, indicating that recently contributions from some Member States had been received. At the seventh session of the Standing Committee, a new proposal had been submitted by Uruguay, but the Delegation of that country did not have the opportunity to introduce its proposal. Honduras and the United States of America had also recently submitted treaty language proposals (respectively documents SCCR/8/4 and SCCR/8/7). A paper clarifying terms and concepts relating to the protection of broadcasting organizations was contained in document SCCR/8/INF/1.

17. The Delegation of Uruguay referred to its treaty language proposal, submitted at the seventh session of the Standing Committee. It stated that the digital revolution had begun in the beginning of the nineties and had had a significant impact on copyright and related rights by generating the need for an updating of the international standards of protection contained in the Berne and Rome Conventions. A process of review had been launched in the 1990s. Once the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) were adopted in 1996, WIPO encouraged activities relating to the rights of broadcasting organizations through the organization of regional consultations that took place in Manila, Philippines, in 1997 and in Cancun, Mexico, in 1998. Since 1998, the analysis and discussion of possible international standards relating to the protection of broadcasting organizations had continuously been on the Agenda of the SCCR. The Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) had not contributed to an improvement of the protection of broadcasting organizations in relation to the development of new technologies. The Delegation considered the improvement of the protection of broadcasting organizations essential and its submission was intended to further the debate. The rights of broadcasting organizations had to be extended along the lines of the WPPT, and the definition of broadcasting contained in the WPPT had to be followed. The transmission of encrypted signals had to be considered as broadcasting and the protection had to cover wire and wireless transmissions. Protection of pre-recorded broadcasts, which were very vulnerable to piracy, had been included in the proposal. The minimum protection for broadcasting organizations in its proposal included the right to authorize or prohibit the fixation and reproduction of fixations of their broadcasts, simultaneous and deferred retransmission, the right to prohibit the making available and distribution of their broadcasts,

and the right to prohibit unauthorized decryption. The Delegation believed that its submission would be a useful contribution and would serve as a step towards crystallizing the views of the Committee on extending to broadcasting organizations the international protection provided to other rightholders by the WIPO 1996 Internet treaties.

18. The Delegation of Honduras, referring to its proposal contained in document SCCR/8/4, stated that its country had made significant efforts to further promote and respect copyright and related rights through national activities, including through some constitutional provisions. It had also adhered to a number of other WIPO treaties. The Delegation had presented a proposal in order to promote dialogue on a future international instrument relating to the protection of broadcasting organizations. It welcomed the comparison of proposals of WIPO Member States and the European Community and its member States in document SCCR/8/5 and the development of an emerging consensus. Its country had already ratified WIPO's 1996 treaties and the provisions of those treaties had been reflected in its proposal (document SCCR/8/4).

19. The Delegation of the United States of America informed the Committee that significant efforts had been taken in the development of its proposal contained in document SCCR/8/7, and it thanked all the stakeholders, representatives of content owners, broadcasters, cablecasters and webcasters that had taken part, although it regretted that it had not been possible to submit the proposal earlier in order to allow delegations more time to review it. The proposal was aimed at having a reasonably up-to-date treaty, given the actual and foreseeable state of technology. The Delegation recognized that some proposals submitted by other Member States limited the proposed treaty's application to traditional broadcasting or assimilated cablecasting to broadcasting. But it thought that this would represent an incomplete solution. It did not see any basis for limiting the treaty to traditional broadcasters and, therefore, had included protection for cablecasters and webcasters. However, it understood that differences among the technologies used would necessitate updating and identifying the rights to be granted in the proposed treaty in respect of each set of rightholders. A strong set of rights was proposed to enable the beneficiaries of the proposed treaty to combat signal piracy and other unauthorized uses of their signals, and to benefit from rights of computer network retransmission, cable retransmission and deferred transmission by wire or wireless means. The right to prohibit the making available to the public on-demand, and rights of reproduction, distribution and importation of reproductions had also been included in the proposal. Several elements of the protection went beyond the Rome Convention, such as the protection of pre-broadcast signals or the obligations concerning technological protection measures and rights management information. Also Article 15 of the proposal would create a new enforcement obligation. An exclusive right of reproduction with respect to unauthorized fixations was to be granted, as well as a right to prohibit all other reproductions. In that way, the beneficiaries of protection under the treaty would be provided with what was needed to prevent unauthorized use of their signals, while the proposal was also responsive to the concerns of the content community about an extension of the right of reproduction of the signals. All the rights to prohibit in Article 6 had been expanded to include activities relating to authorized as well as unauthorized fixations. Membership of the treaty would be limited to those countries that had joined the 1996 WIPO treaties. The proposal provided for a two-tiered approach to rights insofar as when a right to prohibit appeared sufficient to fight signal theft, it opted for the right to prohibit in order to minimize the possibility of affecting the exclusive rights or rights of remuneration of content owners.

20. The Delegation of Barbados, speaking on behalf of GRULAC, expressed its thanks to the Delegation of the United States of America for its proposal. Due to the late submission, however, the Group would have to reserve its position until it had had sufficient time to study it.

21. The Delegation of Japan referring to the proposal of the Delegation of the United States of America, requested clarification on a number of points. It indicated that a written list of questions would be submitted to that Delegation. The questions concerned the following issues contained in the said proposal: (1) The scope of webcasting and whether the definition of that concept covered only real-time streaming or whether other forms of Internet transmission were also covered; (2) The meaning of the concept of “the first transmission to the public” contained in Article 2(d): with that definition, in case one broadcasting organization carried out a broadcast, and later other broadcasting organizations carried out the broadcast again by utilizing the fixation of the broadcast of the former broadcasting organization, the latter broadcasting organization might not be entitled as a beneficiary, which was not consistent with the Rome Convention; (3) the difference between “the exclusive right of authorizing” contained in Article 5 and “the right to prohibit” contained in Article 6; (4) whether the right of fixation contained in Article 5(e) covered the fixation of a broadcast of still photographs; with respect to Article 5(g)(i), the right of public rendition was limited to “broadcasts, cablecasts or webcasts of sound and images embodied in audiovisual works.” That might exclude broadcasts, which embodied sound only. The Delegation asked whether there was any particular reason for that limitation; (5) whether the principle of reciprocity would be applicable with respect to the right of public rendition; however, at the same time, in Article 3, national treatment was also applied without any exception. Therefore, there might be a conflict between those two provisions. It would be appropriate that the reciprocity stipulated in Article 5(g)(ii) was exempted from the national treatment in Article 3 by adding a sentence like “this obligation does not apply to the extent that another Contracting Party makes use of the reservations permitted by Article 5(g)(ii) of this Treaty;” (6) with respect to Article 5(d), an exclusive right of authorizing Internet transmission of fixations of broadcasts, etc., would be granted to broadcasters, cablecasters and webcasters, whereas the WPPT did not grant such rights to phonogram producers and performers; what were the reasons for that difference in treatment; (7) with respect to the right of distribution in Article 6(c), it might be necessary to add a similar sentence as stipulated in the WCT and WPPT, that was “[N]othing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right applies after the first sale or other transfer of ownership;” (8) with respect to the right of importation in Article 6(c), the introduction of such right should be carefully considered since other right holders, such as phonogram producers, did not have such right and it might lead to possible imbalance in rights granted among right holders. Even if such right be introduced, it should be at least limited to the case of “fixation made without consent.”

22. The Delegation of Singapore indicated it had not managed to finalize its analysis of the scope of the proposal submitted by the United States of America. It offered some preliminary remarks by noting that the proposal provided a wide definition of the concept of “broadcasting organizations” which broadened the scope of the beneficiaries of the protection. It asked for the implications of that broad protection for additional broadcasters and whether broadcasters would have to pay such new categories of right holders. The introduction of a right of importation in Article 6(c) would constitute a precedent. The Delegation requested explanations on the difference between exclusive rights and rights to prohibit. It asked why the concept of “program-carrying signals” was not included in the proposal submitted by the United States of America.

23. The Delegation of Australia raised a number of questions in relation to the proposal of the United States of America, and expressed some regret that it had not been able to present a proposal of its own at this stage. While the meetings of the Standing Committee in the past had demonstrated wide agreement on the need for the true object of protection to be broader than traditional over-the-air broadcasting as specified in the Rome Convention, the proposal of the United States of America was extending to a farthes scope of such protection. Reflecting the reality of the time when it was concluded, the Rome Convention offered protection to broadcasting organizations and not to individuals. In this connection, the Delegation raised the question whether the intent behind the proposal of the United States of America was to extend rights also to individuals who might engage in webcasting from their private homes or computers. Article 2(d) of the proposal defined "broadcasting organization," "cablecasting organization" and "webcasting organization" as a person or legal entity and though in legal terms corporate entities were distinct from individuals, that particular definition seemed to extend protection also to individuals who were not operating through a corporate entity. Therefore the proposal seemed to spread protection much wider than merely to broadcasting organizations as it covered also cablecasting organizations and webcasting organizations. The question arose whether the Committee was prepared to go further than the proposals in the past and provide protection for a new category of service delivery such as webcasting. The Delegation wondered whether the time had come to redefine broadcasting and essentially protect the rights of both broadcasting and webcasting organizations. The Delegation also raised a question with regard to the definition of "computer network retransmission," which, in the proposal of the United States of America, did not specify that the transmissions should be to the public. The question arose whether computer network transmission could extend to cover a local network or Intranet. If that was the case, the right would seem rather extensive. As far as Article 3(2)(b) on beneficiaries of protection was concerned, it was not clear whether in the case of a webcast, the proposal referred to the country of location of the server from which the webcast was transmitted. The Delegation also noted that the definition of rebroadcasting was worded in terms of transmission for public reception. That showed the contrast between computer network retransmission, which did not refer to the public, and broadcasting, which was defined in terms of broadcasting and consequently transmission to the public. With regard to Article 5(g)(i), which specified the exclusive right of authorizing the public rendition of broadcasts, cablecasts or webcasts of sounds and images embodied in audiovisual works, it was a question why that right was confined to television broadcasts of audiovisual works. Finally the Delegation supported the question raised about the difference between the exclusive rights in Article 5 and the right to prohibit in Article 6. The right to prohibit was expressed in terms of having the right to prohibit certain acts when undertaken without authorization, but if something had to be authorized that would mean that the broadcaster, webcaster or cablecaster would effectively enjoy a right of authorization. If the underlying rightholder had refused authorization for the broadcaster to exercise its broadcasting rights, one wondered how an authorization by the broadcaster could affect that. No rightholder could have a right to authorize which would override the need for authorizations from other rightholders.

24. The Delegation of India stated that the proposals required detailed and serious examination with reference to other treaties and conventions, especially the WCT and WPPT. Its Delegation was of the view that the rights granted to broadcasters should not be too broad and sweeping so as to override the rights given to the copyrightholders to exploit their creations and their right to making available to the public. There was a need to establish a balance between the right of the copyrightholders and the broadcasters, who were providing technological assistance in making available to the public. What was required to be protected

under the new treaty was therefore the “signal piracy” which could best be done through technological means. Some of the rights proposed for broadcasters by the Governments had nothing to do with fighting signal piracy but were economic in nature and might have implication for the rightholders of the underlying content. In the proposal of the United States of America, the Delegation observed that along with broadcasters, cablecasters and webcasters had also been added. The definition of those terms was very wide and needed to be examined in detail. The Delegation was of the view that there was a need to consolidate the standards of protection offered under the WCT and WPPT before considering a new instrument for broadcasting organizations. All papers received needed to be considered and examined by Member States in more detail before any decision could be taken.

25. The Delegation of the European Community thanked all delegations that had submitted proposals in treaty language and shared some of its initial reactions to them. With regard to the proposal of the United States of America, the Delegation referred to the issue of the scope of protection. The first question in that regard was the definition of webcasting. While interactive activities had been excluded in Article 2(a) and (b) of the said proposal, that was not the case in Article 2(c). That would lead to the conclusion that interactive acts of webcasting were indeed covered by the proposed definition of webcasting. These second question referred to the definition of “broadcasting organization” in Article 2(d). One of the alternative conditions listed for an organization to be considered a broadcasting, webcasting or cablecasting organization was that it had the responsibility for the first transmission, or for the assembly or scheduling of the content of the transmission. That could mean that an organization which only undertook the assembly or scheduling of the content of the transmission could not enjoy protection under the definition, and the Delegation asked for clarity on that point. With regard to Article 8 on limitations and exceptions, it emphasized that Article 8(4) included a “grandfathering clause” allowing contracting parties to maintain certain limitations and exceptions. It was difficult to understand how that would relate to Article 15 of the Rome Convention, which included a list of permitted exceptions. Furthermore, the Delegation was not sure how Article 8(4) would relate to footnote 1, which applied the agreed statement concerning Article 10 of the WCT *mutatis mutandis* to Article 8. With regard to footnote 2 of Article 10 on obligations concerning technological measures, the Delegation was of the impression that Article 10 dealt with the use of encryption as a technological measure to prevent unauthorized reception within the meaning of that Article, which would mean that the use of encryption as such, irrespective of any link to copyright protection, would not enjoy full protection under Article 10. If that was the case then Article 10 appeared to go beyond the respective provisions of the WCT and WPPT. Finally, with regard to Article 18 on the eligibility for becoming party to the treaty, it pointed out that it seemed that being party to the WCT and WPPT was a condition for becoming a party to the new treaty. The Delegation requested clarification as to why such a conditional link to the WCT and WPPT should apply.

26. The Chairman, referring to the questions addressed by different delegations to the Delegation of the United States of America, indicated that the latter could seek more clarification or decide to respond to some of the questions bilaterally. Also, he pointed out that some of the questions could be discussed later during the debate on the substantive issues.

27. The Delegation of the United States of America stated that, because of the complexity of some of the questions posed, it was necessary to hold discussions among its members. Particular articles or issues might be taken up when discussing specific rights later. It recognized that some assumptions made in the proposal were not necessarily shared by other delegations. However, it would try to answer some of the questions. As regards the requirements here required

accession to the WCT and the WPPT, it pointed out that it was fundamental to maintain the balance with, and to ensure protection of, other categories of rightholders. The proposal could not diminish or affect in any way the rights granted in other treaties, namely the Berne Convention, the TRIPS Agreement, the WCT and WPPT, the Satellites Convention and the Rome Convention. As regards whether the definition of webcasting covered interactive communication, it stated that during the consultative process in its country concerns had been expressed that all types of webcasting, even streaming, involved some element of interactivity. Thus, for technical reasons it thought it was inappropriate to make exclusions. As regards the question, asked by the Delegation of Australia, whether in Article 3(2)(b) the term "facility" referred to a server in the case of webcasts, the answer was affirmative. The wording had to be general enough to cover the different kinds of facilities used in all the cases mentioned in that Article. As to the question raised by the Delegation of Singapore about whether a broadcaster that re-broadcast, presumably without obtaining permission, the contents of a webcast or cablecast had to pay for such re-broadcasting, the answer was also affirmative, unless the act of re-broadcasting involved came within the scope of one of the limitations provided in the proposal. In answer to the question why the definition of computer network retransmission did not mention the phrase "to the public," that was due to an assumption made because of the very nature of the proposed treaty, dealing with broadcasts, cablecasts and webcasts. That definition could, however, be worded in a more explicit way. Regarding the difference between an exclusive right and a right to prohibit, it answered that the latter category existed already in Article 14 of the TRIPS Agreement. The Delegation pointed out, in answer to the Delegation of Australia, that indeed the reference made to acts undertaken "without the authorization" in Article 6 of the proposal might imply a right to authorize. That reference could be reassessed at a later stage. As regards the question of the scope of the treaty, it said that the title of the proposal revealed that it was intended for the protection of the rights of broadcasting, cablecasting and webcasting organizations, taking into account foreseeable future developments regarding both technology and business models. Finally, the Delegation would seek clarification from some delegations in order to better understand their questions and provide appropriate answers.

28. The Delegation of Algeria, speaking on behalf of the African Group, welcomed the different proposals submitted for the session. It noted that the Group would comment on them the following day in the light of the consultations that it would be holding.

29. The Chairman noted that, given the number of questions posed by the different delegations regarding the proposal of the United States of America and for the sake of clarification, it would be helpful to put in writing all of the questions asked, for transmission to both the Delegation of the United States of America and to the Secretariat. He also indicated that the working paper prepared by the Secretariat on terms and concepts (document SCCR/8/INF/1) would not be used as a basis for debate, but its content could be used when discussing substantive items during the session. In addition, he proposed to discuss a number of items in the following order: (i) scope of protection and rightholders; (ii) rights to be granted; (iii) national treatment and beneficiaries; (iv) limitations and exceptions; (v) technological measures of protection and rights management information; (vi) term of protection, application in time, formalities, reservations and enforcement. Issues regarding relation to other treaties, the title and preamble and other remaining questions could be discussed at a later stage. Discussion on those items would be split between the present session and the next session of the Standing Committee in 2003.

30. The Chairman suggested that the Committee first discuss issues relating to the scope of protection. They consisted of two elements, first the object of protection (what is to be protected), and second the persons and entities entitled to protection. He stated that the transmission of signals was the principal focus for protection in this exercise. With respect to traditional broadcasting, such protection was already established. One of the questions was thus whether to extend similar protection to cable-originated signals. In some jurisdictions, broadcasting was defined as “over-the-air.” In some jurisdictions, cable-originated signals were included in a broad notion of broadcasting. He referred to the notion of “computer network-originated signals” presupposed in the proposal of the United States of America, which was also being referred to both as “streaming” and as “webcasting.” In webcasting, the reception would be instigated by the act of the user. In that context, it could be said that there would be a signal, as there would be a signal in broadcasting, and the end result would look very similar to either broadcasting or cablecasting. However, he noted that the current technology for webcasting was less evolved than for broadcasting and that, while the number of users was limited in webcasting, it was potentially unlimited in broadcasting. He stressed that it would be necessary to clearly define the criteria by which protection or lack of protection would be decided. Was it to be linked to the degree of interactivity? Also, the persons or entities who would benefit from protection must be clearly defined. Would they be those who initiate the transmission of a signal; those who bear responsibility for the operation; those who bear responsibility for securing the appropriate licenses, assembling or have editorial responsibility for the content, or whom make the investment necessary for the transmission to take place? Following those remarks on the scope of protection under the possible treaty, the Chairman opened the floor for discussion on the subject.

31. The Delegation of Japan observed that, while the rights of authors, performers and producers of phonograms had been properly updated, it had now become important to update the rights of broadcasting organizations. The Delegation pointed out that the proposal from the United States of America had introduced a very important element into the discussions, namely webcasting, which had not been discussed as part of the Rome Convention, but which was to be examined in the current exercise at WIPO. As its scope and definition were still to be clarified and contained a number of important questions, one would have to take considerably long time to reach consensus. Therefore, it might be appropriate to discuss that issue as an independent question separate from that of the protection of broadcasters. In discussing the issue of webcasters, there were three points of concern, namely: (i) a large number of newly emerging beneficiaries; (ii) the influence on other right holders; and (iii) enforcement. As to the first point, a large number of individuals could conduct webcasting and consequently would be entitled to enjoy new rights. The Delegation asked whether they should and answered itself saying that one should be careful in creating and granting new rights to all those individuals. If one considered how one should limit the scope of the term of webcaster, there would be the following question: broadcasting organizations were regulated by government authorities, e.g., in allocation of radio waves. So, it was natural to understand that the rights of broadcasting organizations were granted in a sense to strike the balance with those regulations. On the other hand, webcasters were not under regulation in such a way, and it was not commonly understood that they had a public role to play. Therefore, it would not be appropriate to use the concept of “public interest” to limit the scope of webcasters. And it was also difficult to establish other reasonable criteria to limit the number or the scope of webcasters. As to the second issue, broadcasting organizations could use phonograms for their broadcasting without the producers’ consent but against appropriate fees. If the new instrument included webcasters as beneficiaries, that privilege might be an issue of discussion. In that case, the influence on the phonogram producers might be very serious. If a new treaty differentiated the treatment of a broadcasting organization and a webcaster, it

would also be difficult to decide which rights should be differentiated. Because there were no clear criteria, the discussion would be complicated. The Delegation also raised the issue of enforcement. The Delegation noted that webcasters were quite different from traditional broadcasters and from cablecasters, in that webcasters could transmit their signals around the world without geographical limitation. That would render enforcement much more difficult, and raise complex questions concerning applicable law and jurisdiction. The difficulty of identifying the nationality of a webcaster could produce a host of problems, including whether it was entitled to protection, especially if the transmission were to be made from a non-member state of the new treaty. In light of the foregoing, the Delegation expressed the view that the issue of including webcasters in the new instrument required careful and serious examination by the Committee.

32. The Delegation of the United States of America observed that many questions had been directed at it in respect to its proposal, including (i) the scope of a new instrument; (ii) the beneficiaries to be protected; and (iii) the object, or subject matter, of that protection. The Delegation recalled that, in formulating its proposal, the use of the phrase “program carrying signal” had been discussed and rejected, mainly because that term did not translate well when one considered webcasters. The main intention, then, was the protection of the signal, not the content. The Delegation underscored that its proposal expressly did not interfere with the rights of content owners, and that that safeguard applied equally to its proposals for protection of broadcasters, cablecasters and webcasters. The Delegation noted the difficulties it had encountered in crafting definitions for broadcasting, cablecasting and webcasting, and alluded to the use of “and/or” in Article 2(d) of its proposal as attempting to meet the concerns of the broadcasting industry in respect to their transmissions to affiliates. The Delegation suggested that it might be necessary to create separate definitions for a “broadcasting organization,” a “cablecasting organization” and a “webcasting organization.” In that latter case, something more would be required than the mere creation of an individual webpage. In respect to the question whether an individual could qualify as an organization, the Delegation believed that an individual could so qualify under certain conditions, such as meaningful investment, the provision of an actual programming package, etc. It suggested that that issue could be covered in the definition of webcasting organization. The Delegation concluded by restating that its intent was to put forth a comprehensive proposal which incorporated current technological reality relative to the communication of information to the public. While the Committee’s work in the present exercise had become complex, that was merely a reflection of the real world. In order to be effective, law had to keep up with the pace of technological advances.

33. The Chairman referred the Committee to the Secretariat’s document on Terms and Concepts (document SCCR/8/INF/1), and specifically to paragraphs concerning the definition of signals, especially paragraphs 20, 21 and 26, as being useful for examination of that issue.

34. The Delegation of Australia stated that the relevant questions were what should be protected and whom should be protected. As to the first, it should be clarified what was already protected and what was still in need of protection today. The Rome Convention had been adopted in response to the gap in existing protection. The WCT and WPPT already covered transmission of recorded and packaged materials such as phonograms and audiovisual works in such a way that members of the public might access these materials from a place and a time individually chosen by them. It should be examined whether there was a need for protection exceeding that established by the 1996 treaties. The Delegation stated that the proposed treaty should protect investment in initial transmission by means of over-the-air or other kinds of broadcasting. On the second question, whom should be protected, the Delegation

noted that traditional broadcasters were subject to regulation as part of their public service function. Webcasters were different in that respect in that anyone could set up a website and their operations were not regulated at all. It was important to discuss the criteria to be used to protect those who carry out web-based activities. However, it was also important to note the global trend towards deregulation of broadcasting. The Delegation of the United States of America had indicated that its proposal in treaty language would extend protection to individual website operators based on the criteria mentioned earlier. The extension of protection to such individuals who operated only on the Internet should be carefully examined.

35. The Delegation of Algeria, speaking on behalf of the African Group, expressed a desire to see progress on the issue of protection of broadcasting organizations. It regretted that due to its late submission the proposal of the United States of America had not been made available in languages other than English in order to facilitate in-depth study. The Delegation underscored the importance of balance between different categories of owners of rights. It took the view that such a balance was not reflected in the proposal of the United States of America. Moreover, the balance could not be easily achieved without adoption and implementation of an international instrument on audiovisual performances. The proposed treaty on broadcasting organizations should be limited to protection of signals, as existing treaties provided adequate protection for broadcast content. Broadcasting organizations should be granted economic rights but not moral rights. The Delegation expressed the view that it was premature to incorporate protection for webcasters, which should be dealt with in a separate instrument.

36. The Delegation of the European Community shared the concern for prudence as regards inclusion of webcasting in the scope of a possible treaty on protection for broadcasting organizations. To begin with, the Delegation was of the view that it was difficult to define “webcasting” or a “webcasting organization.” Moreover, broadcasting itself was no longer what it used to be, and the definition contained in Article 3(f) of the Rome Convention was too narrow. As reflected in the European Community directives that deal with broadcasting, a wider definition was necessary to include coverage of broadcasting by wire. Protection of broadcasting organizations under the Rome Convention was based on the theory that they deserved protection for their investment, their cultural contribution, and for their organizational and other efforts made in putting together and editing the content, and taking into account that they were subject to regulation. It was necessary to go back to those basic principles. Technology – by wire or wireless means – would not provide for valid answers. One consequence would be that not any forms of webcasting or “casting” necessarily merited protection under the new treaty.

37. The Delegation of the Russian Federation welcomed the proposal made by the United States of America. It agreed with the Delegation of Algeria that the protection of webcasters should be subject of a separate instrument. As to the object of protection, it agreed with other delegations that signals should be protected rather than content. However, it was of the view that it was also important to define the content included in broadcasts.

38. The Delegation of China questioned how much creative effort that would justify intellectual property protection was actually involved with regard to the transmission of information on the Internet. In China the issue of webcasting was still new, whereas in the United States of America use of the Internet was very advanced. It might be appropriate to extend international protection to cable television, but the Delegation was uncertain as regards extension of such protection to webcasters. The issue would be discussed internally in China

in order to evaluate the status to be accorded to those entities. One should first resolve the question of protection of broadcasting and cablecasting organizations, as webcasters use and transmit almost entirely other people's intellectual property. In other words, the scope of protection should not be too wide at the present stage.

39. The Delegation of Thailand informed the Committee that, in its country, broadcasting organizations and cablecasting organizations were subject to regulation, while webcasters were not at present. Accordingly, it would not be appropriate to extend protection to webcasting organizations at the present stage. It was also necessary to examine the balance between any new protection and the rights of copyright holders and holders of related rights in content. Since more time was required to better understand the issue, the Delegation would express further views at a later session of the Committee.

40. The Delegation of Singapore suggested that, as a possible way of clarifying issues and moving discussions forward, the Committee could focus on granting protection to broadcasting organizations when they used new means of delivering signals, rather than looking at the criteria for broadening the beneficiaries of protection to include entities such as webcasters, in the light of the controversy surrounding possible extension of protection to individual operators of websites. Webcasting by traditional broadcasting organizations seemed to be a matter of their making use of a new mode of conveyance for delivering signals. Moreover, webcasting was not yet an established business model. The Committee could carefully study what additional economic rights should be granted to broadcasting organizations to take into account new means of transmitting signals rather than seeking to protect a new category of beneficiary organizations. In doing so, technical aspects should be considered: was it possible to intercept a signal over the Internet and use it in an infringing manner? If so, what acts (reproduction, etc.) were involved in that process?

41. The Chairman indicated that no single government delegation had stated the need to extend the protection of signals to also cover content, and consequently the current discussion would henceforth cover only signals and not their content. Safeguard clauses and appropriate indications in the preamble would be put in place if necessary to clearly delimit the protection of signals and avoid overlap with content protection.

42. The representative of the United Nations Educational, Scientific and Cultural Organization (UNESCO) indicated that, in devising new protection to broadcasters, it was important to maintain a balance with the interests of other right holders such as performers and authors, and to take into account the public interest in ensuring access to information and promotion of education and research. In respect of the proposal of the United States of America, he suggested that the conditions for eligibility for accession to the broadcasting treaty should not be limited to members of the WCT and WPPT, but should also require membership of the Rome Convention.

43. The representative of the International Literary and Artistic Association (ALAI) commended the Secretariat for its working paper, document SCCR/8/INF/1. He indicated that some of the opinions previously expressed, notably by the Delegation of the United States of America on how protection of content and signal were complementary, did not seem to take into account the clarifications contained in that document (particularly paragraphs 9 and 22), which reflected previous discussions in the Standing Committee. Accordingly, the object of the protection was the signal themselves and not the content that they transmit. The representative of ALAI was skeptical concerning the object of protection envisaged in the proposal of the United States of America. He stated that inclusion of webcasters could result

in affording unjustified protection to millions of individuals whom maintained a mere web presence. Such an enlargement of the scope of protection was to be distinguished from the possibility, expressed by the Delegations of Singapore and Australia, of conferring on broadcasters a new right to control webcasting of their broadcasts.

44. The representative of the Digital Media Association (DiMA) cited two general principles recognized in previous WIPO activities and urged their application to the issue under discussion. First was the principle of technological neutrality, according to which protection was afforded irrespective of the technology employed to make signals or content available. As convergence was taking place in respect of devices for making content available to the public, the public, especially the young, cared less and less about the particular means of transmission employed to deliver content. The second principle cited by the DiMA representative was that, once a certain rationale and criteria of protection had been developed, it should be applied in an equal manner to all types of organizations. The representative took the view that the proposal of the United States of America reflected those basic principles, as well as recognized the basic aspirations of webcasters. He contested some assertions on the economic and technical limitations of webcasting, particularly as compared to broadcasting, that had been expressed during the Information Seminar. While it could be accepted that the larger audiences characteristic of webcasting required a greater investment than in the case of traditional broadcasting, there were not substantial differences in the total level of investment required to reach a given, considerable audience. The difference was to be seen in respect of the timing of the investment – up front for the broadcaster, more gradually for the webcaster – rather than based on total amounts required. Finally the representative of DiMA stressed the importance of the difference between downloading and streaming, and indicated that this assertion related only to the latter.

45. The representative of the National Association of Commercial Broadcasters in Japan (NAB-Japan) stated that there was neither national nor international legislation in place protecting webcasters and webcasting clearly, and that the proposal of the United States of America was unprecedented in that respect. Webcasting was in an early stage of development and did not have a uniform position in every country and market. Consequently, it was extremely difficult to include it for protection in that treaty. On the contrary, broadcasting was well established both in legislation and markets and accordingly urgent updating of protection was required in order to combat piracy in the new technological environment. It was therefore advisable to proceed in two stages, first, to undertake necessary updating of the international protection of broadcasters, and second, once the social and economic implications of webcasting were clearer, to embark upon discussions on the protection of webcasters.

46. The representative of the Asia-Pacific Broadcasting Union (ABU) declared that in 1997 the Manila WIPO Symposium on Broadcasting had expressed the urgent need for protecting broadcasting organizations. Since then signal piracy had proliferated. However, discussions in the Standing Committee had not yet resolved the lack of protection at the international level. The following facts should be considered in order to proceed speedily at the international level: first, a majority of delegates had already expressed, at different sessions of the Standing Committee, the need to update the level of protection of broadcasting organizations. Second, the object of such protection should be the broadcast signal. Third, the lack of consensus on the need to protect cablecasting and webcasting should not prejudice existing consensus on updating the protection of traditional broadcasters.

47. The representative of the International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), speaking also on behalf of the International Confederation of Societies of Authors and Composers (CISAC), indicated that authors, composers and publishers of music recognized the need to update the protection for broadcasting organizations. However, such protections should be limited to the fight against signal theft and piracy. Some of the proposals discussed expanded the notion of broadcasting, which raised the dangerous prospect of creating new related rights without clear justification. Control of signals by broadcasters should not hinder the exercise of rights by other right owners.

48. The representative of the International Federation of Actors (FIA) recognized the need to consider new means of distributing program -carrying signals. However, he considered that widening the object of protection of a possible treaty would be both premature and unnecessary. The current debate reflected a vast confusion between the object of protection and the rights to be granted. It was of paramount importance to limit the scope of protection to the signal, avoiding any confusion with content and any prejudice to existing right holders .

49. The representative of the International Federation of Phonogram Producers (IFPI) commended the working paper (document SCCR/8/INF/1) prepared by the Secretariat. She considered that the current debates should be focused on what should be protected and who should benefit from protection. In respect of the first issue, she declared that the appropriate object of protection was the signal itself and not the content they carry. She stated that some of the rights included in the proposals, such as the distribution, rental and making available rights, were linked to content and not to the signal. In respect of who should be protected, there was a need for clarity in the definitions, in order to understand which organizations would be protected and the extent of national treatment obligations. Moreover, consistency with international concepts was needed, and in particular with the Berne Convention, the Rome Convention, and the WIPO Internet treaties. The concept of broadcasting not only delimited a category of beneficiaries of protection but also was a key determinant of the scope of limitations on the rights of other right holders , including the compulsory licenses in both Article 11bis(2) of the Berne Convention and Article 8 of the WCT, and the possibilities to make reservations (and therefore for depriving performers and producers of any broadcasting or public performance right) under both Article 16 of the Rome Convention and Article 15(3) of the WPPT. She further declared that changing the definition of broadcasting would amount to extending rules and privileges developed for specific forms of exploitation without any justification. Consequently, the representative of IFPI opposed extension of the concepts of "broadcasting" or "broadcasting organization" to include organizations such as webcasters or the activity of webcasting.

50. The Chairman stated that for the time being not a single proposal other than that of the United States of America explicitly included webcasting within the scope of protection. Also, the reactions of other delegations so far to the webcasting proposal could not be qualified as supporting it. The said proposal extended protection to webcasting only on the basis of a separate definition. Those issues clearly merited further consideration by the Committee.

51. The representative of the European Group Representing Organizations for the Collective Administration of Performers Rights (ARTISGEIE) stated that many delegations had been surprised by the broad scope of protection put forward in the proposal of the United States of America. That proposal established "Rome plus" levels of protection which went beyond the emerging consensus. Discussion on new forms of protection should mainly take into account new forms of signal piracy. The Delegation of Algeria, on behalf of the African

Group, the Delegation of China and the Delegation of India had clearly underlined that a precondition for broader protection for broadcasting organizations was the satisfactory and effective guarantee of the rights of authors, performers and producers, namely, those who created and produced content. In that regard, it was necessary to continue working on the international protection of audiovisual performances. In addition, Article 18 of the said proposal was very important because in order to become party to the proposed treaty, it would be necessary to be party to the WCT and WPPT. The Rome Convention should be also included in that list of prerequisites. As regards the distinction between the content and the signal, it was difficult to understand how a right of distribution would not relate to the content, rather than the signal. Much hesitation could be expressed regarding the inclusion of the protection of webcasters, for instance, the requirement that they make the first audio or audiovisual transmissions was unclear and would be difficult to prove. As regards Article 6 of the proposal, the Delegation stated that the right to prohibit reflected an appropriate solution, aimed at fighting against piracy.

52. The representative of the International Music Managers Forum (IMMF) expressed surprise that so much attention was given to protecting broadcasters although they were not obliged to obtain licenses from other holders of neighboring rights, particularly those provided for in Article 15(3) of the WPPT. Hence, the protection requested was clearly disproportionate. As pointed out by the representative of UNESCO, any additional protection should be dependent on the country being party to the Rome Convention. As regards webcasters, it was advisable that first they reached an agreement with other creators, performers and producers about the treatment of content providers. He endorsed the statement of the Delegation of Singapore regarding the inclusion of the protection of simulcasts as broadcasts. The discussion on the scope of protection had so far not dealt with interactivity, but solutions to fight piracy in that area also needed to be taken into account.

53. The representative of the Association of European Performers Organisations (AEPO) endorsed the comment of the Delegation of China regarding the scope of protection *vis-à-vis* webcasters. Two fundamental questions had to be borne in mind as to what the Committee was trying to protect: a creation or an investment. That was, in fact, the basis of the whole copyright and related rights system. He also referred to the statement of the Delegation of Algeria on behalf of the African Group regarding the premature character of the question of the protection of webcasters. Before discussing that issue, it was necessary to have a minimum balance of protection among right holders in order to avoid the creation of a detrimental imbalance. The proposal put forward by the United States of America posed a danger in that regard.

54. The representative of the International Federation of Film Producers Associations (FIAPF) stated that her Organization's members also faced problems caused by piracy. The intention of having an instrument that addressed those problems was therefore commendable. However, the protection afforded to the beneficiaries had to be unambiguous, namely, a protection for the signal alone. The proposal of the United States of America included very interesting concepts, notably the right to prohibit and the distinction among broadcasters, cablecasters and webcasters. As to the latter, she recalled the statement of the Delegation of Japan with regard to the clarification of the concept of webcaster, the means of enforcement offered and the impact of the rights granted on the rights of other categories of right holders. In a practical situation, if a producer gave a license to a webcaster to exploit his film, the former would appreciate to benefit from the additional level of protection granted to the latter, as far as the protection granted to the webcaster did not interfere with the producer's economic rights.

55. The representative of the International Confederation of Music Publishers (ICMP) recalled that the discussions held so far were about the protection of signals and not of content. She recognized that the proposal tabled were not intended to prejudice the balance among the rights of the different categories of rightholders. However, she was concerned that the present exercise developed a contradictory imbalance in which the exercise of rights in the content would be hindered by a variety of gatekeepers benefiting from new economic rights going far beyond what was really needed for the protection of broadcasters and their signals. As regards the question of what had to be protected, she noted that the object was the signal and it should be protected in order to fight against piracy. In the proposal of the United States of America, the beneficiaries of protection were broadcasters, cablecasters and webcasters, and incidentally they were not defined. Also, the term “program-carrying signals” was not used in that proposal since it seemed not to be adapted for webcasting purposes. However, when justifying the protection of signals, some of the reasons given were: the cultural contribution, the editing and packaging of programs, creation and investment. Only the latter related to the protection of the signal, as the rest concerned the content. Hence, it should be clear as to what had to be protected and why such protection would be granted. As regards webcasting, there was no evidence that signals could be intercepted over the Internet. Recalling the statement of DiMA, she noted that the infringement took place at the point of access of content and not in the course of the transmission of the signal on the Internet. Therefore, the object of protection should be only the broadcast signal. As to the question of who to protect, the “Rome plus” exercise should involve only existing categories of rightholders. Creating a new category of neighboring rightholder was a quite different matter, especially regarding the need, purpose and the unclarified target behind such a suggestion. She urged therefore the Committee to put aside the idea of protecting webcasters.

56. The representative of the Ibero-Latin-American Federation of Performers (FILAI) expressed his concern about the degree of uncertainty in regard to the balance of protection among the different rightholders that was introduced by the broad proposal of the United States of America. It would be necessary to differentiate perfectly between the protection of the signal and the protection of the content of that signal. Such differentiation was a difficult task. It was advisable, before embarking on discussions about an agreement for the protection of broadcasters, to finish the pending matter regarding protection of performers in audiovisual performances. Without the latter, a paradox could arise in which protection of those who communicated the content was granted before protection for those who created that content, namely the rightholders. With regard to the signal, broadcasters already had specific protection of an international character which regulated the radioelectric spectrum at national level. That protection took the form of administrative, penal or civil provisions. He expressed his concern about the distortion that those rights might experience. In that respect, he reminded the Standing Committee about the storage of ephemeral recordings made by broadcasters for the communication to the public of their broadcasts for which, in accordance with Article 15(c) of the Rome Convention, no authorization was needed from the rightholders, were stored. Some of those recordings constituted real music libraries that dated back more than 15 years. As pointed out by the Delegation of Japan, it was necessary to discuss what type of broadcastings should be protected. He opposed extending the concept of broadcasting to forms of transmission relating to the Internet. Broadcasters as rightholders were very different and had very different needs of protection. He also opposed any automatic solution based on application of the provisions of the WCT and WPPT to protect broadcasters, as rightholders were very different and had very different needs of protection.

57. The representative of the Union of Industrial and Employers' Confederations of Europe (UNICE) stated that her Organization recognized the need for enhanced protection for broadcasting organizations at international level. That protection should be modernized so as to enhance the fight against signal piracy. That would require a broadcast-specific system of protection taking into consideration the technical specificity and the needs of the broadcasting sector. Also, she stated that the scope and beneficiaries of protection had to be defined expressly and clearly, otherwise legal certainty was at risk. In that regard, the proposal of the European Community and its member States did not fulfill that goal, but led to confusion particularly with regard to the distinction between broadcasting and Internet dissemination. As far as the definitions were concerned, the proposal of the United States of America clearly distinguished between broadcasting, cablecasting and webcasting.

58. The representative of the Digital Media Association (DiMA) clarified some points of misunderstanding. First, as regards piracy on the Internet, both technological protection and legal protection were needed. The latter form of protection was the second prong that his Organization was seeking in order to combat piracy of Internet-originated signals. The signal that was taken from the server as streaming was re-streamed to other consumers in a way very similar to signals being taken from the transmission from a radio antenna and retransmitted over-the-air or over the Internet to others without authorization. Further, he referred to the need for legal protection. When an Internet company approached content owners for licensing sound recordings or motion pictures, the usual answer was negative due to the right holders' fear of piracy on the Internet. However, technological measures of protection could be defeated, and therefore legal protection regarding the signal was needed. He hoped that WIPO would allow his Organization in the future to make presentations showing how Internet webcasting actually took place.

59. The representative of the International Labour Organization (ILO) shared the opinions expressed by many delegations regarding questions concerning the difference between a program-carrying signal and contents. Those who had attended the Diplomatic Conference of December 2000 regretted not having concluded a treaty on audiovisual performances, because discussions would be clearer if the updating of the rights of other right holders had already been accomplished. The lack of consensus over protection of webcasters reflected the difficulty of negotiating new rights without having settled rights in the content. In addition, the balance of rights had to be kept up-to-date with the new technologies. Finally, he supported the statement of the representative of UNESCO regarding the importance of the Rome Convention as a point of reference for the present discussions.

60. The Delegation of Canada asked the representative of DiMA whether it was a problem if somebody intervening simultaneously retransmitted an unchanged streaming signal which was intended to be communicated to the general public, and therefore was completely accessible to everyone and not restricted by a subscription or another kind of payment scheme.

61. The representative of the Digital Media Association (DiMA) answered affirmatively. On the one hand, webcasters were recharged very often on a per-performance basis for each song or motion picture streamed. The payment was owed to the content owners pursuant to a license. On the other hand, the webcasters needed to get money through advertising. If the person intervening made use of the streaming in the way described by the Delegation of Canada, the webcaster would not be able to obtain payment based on the number of advertisements that actually were seen, and the content providers and performers would not receive any royalties from the pirated performances.

62. The Chairman reminded the participants that the proposal of the United States of America explicitly included transmissions in computer networks within the scope of protection. Many government delegations and almost all the non-governmental organizations had expressed their concern about extending the scope of protection in that way. The debate had not brought about new criteria for the distinction between cable transmission and transmission over the web. He therefore proposed to reverse the approach. Many interventions had indicated that web transmissions should not be included in the scope of the instrument. However, one governmental delegation and one non-governmental organization had proposed such inclusion. That proposal had to be examined properly in order not to engage in an exercise that would lead to the adoption of an instrument that would become obsolete or outdated in the near future. Those delegations calling for some flexibility regarding web transmissions were requested to reflect on the precise level of flexibility to be required. That would help determining the starting point of the discussions regarding the scope of protection. With reference to the rights to be granted or restricted acts, document SCCR/8/INF/1 included a list that had been drawn up during the last session of the Standing Committee held in May. The rights or restricted rights identified were: (i) fixation; (ii) reproduction of fixations; (iii) distribution of fixations; (iv) decryption of encrypted broadcasts; (v) rebroadcasting; (vi) cable retransmission; (vii) retransmission over the Internet; (viii) making available of fixed broadcasts; (ix) rental of fixations; and (x) communication to the public (in places accessible to the public). As regards the object of protection, most delegations would consider traditional ways of transmission, namely over-the-air broadcasting and perhaps cable transmission. For the sake of clarity, those advocating additional objects of protection were invited to elaborate their ideas on the need for rights for such objects. Many delegations had expressed support for protections specifically designed against signal theft. The Rome Convention granted broadcasters a number of rights and some of them were signal-oriented rights, as for example the rights of rebroadcasting and of fixation. The rebroadcasting right provided broadcasting organizations with the possibility of acting as economic operators and to license the signal to be distributed. However, it was difficult to draw a distinction between piracy-oriented rights and economic rights.

63. The Delegation of Canada considered it possible to distinguish rights by separating acts that took place at the time of the transmission itself, such as the rebroadcasting right, on the one hand, and other rights that related to subsequent acts based on a fixation, on the other. Several of the rights that might be granted to broadcasting organizations in a new treaty would give them broader protection than other categories of related rightsholders under the WPPT, for example, for the broadcasting of a fixation. In the case of an interview or a performance fixed on a phonogram in a radio studio, that phonogram and its content would receive less protection than an authorized audio fixation of the broadcast of that interview or performance. Providing another layer of protection by granting rights in the exploitation of authorized or lawful fixations would create a new property right and that could have the effect of hampering exploitation of works. However, granting rights only against the exploitation of unauthorized or unlawful fixations would be targeted towards the fight against piracy.

64. The Delegation of Cameroon suggested looking at existing instruments before granting any new rights to broadcasting organizations. A number of existing rights could be retained from the Rome Convention, as for instance the rights of fixation, reproduction of a fixation, communication to the public and rebroadcasting, whereas a number of other rights, such as the rights of distribution, rental, and making available, could be taken from the WPPT. Decisions on the rights to be granted had to be taken on the basis of existing instruments so as to avoid granting broadcasting organizations broader rights than other related rightsholders.

65. The Delegation of Japan referred to the right of decryption of encrypted broadcasts and to the 1996 WIPO Internet treaties, which linked the scope of the protection of technological measures to the rights granted. Decryption was not covered by the rights granted and would not fall under the scope of the protection. The solution would be either to grant a right of decryption, or to provide specific provisions on technological measures of protection. If the decryption right was granted as an exclusive right, it would strengthen the position of broadcasting organizations beyond that provided to other right owners. The Delegation reserved its position in that respect, pending consultations at the national level.

66. The Delegation of Switzerland stated that the issue at stake was which rights were to be granted to broadcasting organizations to allow them to adapt to the challenges raised by new technologies. An intention to limit protection to the fight against piracy had been expressed, but it was difficult to draw a distinction between protection based on economic rights and protection based on the fight against piracy. Piracy could take place only when rights had been granted to right holders, and piracy could not be said to exist if no rights – and therefore no protection – was in place. Increased penalties would be more efficient to fight against piracy. The Swiss treaty language proposals sought to improve protection for broadcasting organizations on the basis of the 1996 WIPO Internet treaties. An appropriate balance of rights had to be achieved, but the WPPT had to be the starting point for affording protection to broadcasting organizations.

67. The Chairman indicated that it would not be desirable to adopt a new treaty that would be below the level of protection granted under the Rome Convention and which would have the effect of reducing the existing level of protection or the minimum rights granted under that instrument.

68. The Delegation of the Russian Federation referred to the list of rights proposed for the discussion, and raised some concerns concerning the decryption right. It would not be appropriate to include it in the catalogue of rights, but it would be preferable to follow the WPPT approach and include it in the provisions relating to technological measures. The Delegation was not in favor of granting broadcasting organizations a right of rental of fixations.

69. The Delegation of the United States of America indicated that it had drafted its proposal, contained in document SCCR/8/7, taking into account the Rome Convention and the WPPT, with a view to not reducing the level of protection granted by these instruments, and avoiding conflict with the exclusive rights granted to other categories of right holders under the Berne Convention, the WCT and the WPPT. The proposal was structured on the basis of exclusive rights – rights to authorize or prohibit – as well as some additional rights that went beyond those provided by existing instruments. Exclusive rights of authorization to be granted to broadcasting organizations were contained in Article 5(a) to (g) and most of those rights were similar to those provided by the Rome Convention, although the instrument limited re-broadcasting of broadcasts to wireless means. In that respect, the proposal went beyond the Rome level. The right of computer network retransmission was also a “Rome-plus” element. Also a right of cable retransmission was provided, which exceeded the Rome level of protection because it was not limited to wireless retransmissions, as was the right of deferred retransmission. Article 5(f) dealt with the reproduction of broadcasts but the right was subject to some conditions. The right of public rendition of broadcasts contained in Article 5(g) was based on Article 13(d) of the Rome Convention but went further and was intended to avoid confusion with the public performance right that extended to the content that was being communicated. The additional right to prohibit, dealt with under Article 6,

referred only to piratical copies of broadcasts. Therefore, the concept of exhaustion was not relevant in that connection. The Delegation intended at a later point to further clarify a number of issues on the basis of the question that had been raised.

70. The Chairman presented document CRP/SCCR/8/1 which reflected the discussion on the object of protection and rights during the past two days.

71. The Delegation of Canada stated that the cable retransmission right should not apply to free over-the-air broadcasting. That right could however be applied to signals with restricted access.

72. The Delegation of Australia suggested that making a fixation of simultaneous stream in of over-the-air broadcasts and cable casts could be considered as direct or indirect reproduction of the original signal. Thus, a broadcaster that streams its own broadcasts did not need protection in respect of that streaming in addition to protection of the original broadcast. g

73. The Delegation of Switzerland stated that a clear distinction between the object of protection and rights was necessary. In its view, some of the items that were listed in the paper, for example transmissions, referred to acts, which could not be considered objects of protection. The object of protection was broadcasts or signals. Acts or activities such as transmissions or broadcasts should be covered under rights, rather than under the rubric of objects of protection.

74. The Chairman referred to a sentence in paragraph 9 of document SCCR/8/INF/1 which read: "It appears that a broadcast is the signal constituting the wireless transmission of images and/or sounds." He stated that more accurate wording for definitions of objects of protection would be found at a later stage.

75. The Delegation of Japan stated, regarding the right of making available, that its proposal covered not only making available of fixed broadcasts but also making available of unfixed broadcasts. Uploading of unfixed broadcasts on the Internet had become technically possible and it was more convenient for the right holders to exercise their right at the time of uploading rather than at the time of transmission. That thinking should be reflected in the proposed treaty. In that connection, the Japanese Copyright Law had been recently amended to provide broadcasting organizations with the right of making available. Furthermore, the Delegation shared the concern expressed regarding piracy of pre-broadcast signals. Pre-broadcast signals, however, were not broadcasts to the public and therefore could not be considered as broadcasts that should be protected under related rights. Caution was required in granting an exclusive right concerning pre-broadcast signals. The relevant question was whether the signal before processing, or the signal that was transmitted from the key station to the local or branch stations, should be protected. Another question was whether the pre-broadcast signal should be protected by an exclusive right, a *suigeneris* right, or by telecommunications law and regulations. In that regard, some delegations suggested that the pre-broadcast signals should be provided "adequate legal protection." The Delegation found that expression useful in order to maintain flexibility for States in terms of how they might implement the treaty in national law. The Delegation would have a clearer position on the issue once domestic discussions proceeded further.

76. The Chairman noted that the right of making available of unfixated broadcasts had not been included in the conference room paper. He also clarified that not all the items referred to as objects of protection would be considered as broadcasts. Some delegations might not consider cable-originated transmission or pre-broadcast signals as broadcasts entitled to full intellectual property protection.

77. The Delegation of the European Community underscored that retransmission over the Internet should be considered as an important object of protection on par with over-the-air broadcast. That view was reflected in Article 6 of the proposal of the European Community, which provided that broadcasting organizations should enjoy the exclusive right to authorize or prohibit the retransmission, by wire or wireless means, whether simultaneous or based on fixations, of their broadcasts. Also, the Delegations saw no reason for deferred broadcasting/cable transmission based on fixation to be regarded differently from simultaneous rebroadcasting or cable retransmission and deferred broadcasting/cable transmission. All three should be covered under the same category of right.

78. The Chairman clarified that retransmission and cable retransmission in the paper were intended to cover only simultaneous and quasi-simultaneous transmissions, that is, those transmissions that were not simultaneous technically speaking but that could be assimilated to simultaneous transmissions.

79. The Delegation of the United States of America agreed with the Delegation of the European Community that retransmission over the Internet was an important right which should be included in the preliminary understanding. That was an area where there were real life problems and where there were already court cases in its country. The right of retransmission over the Internet was covered by the exclusive right of authorizing computer network retransmission, which was contained in the proposal of the United States of America. However, at the present stage, it was useful to keep separated denominations for the rights, in that slightly different treatment might be required depending on the medium that was being employed.

80. The Delegation of Switzerland, referring to its earlier intervention, suggested that the term "signal" replace the term "transmission" to describe the object of protection in the paper.

81. The Delegation of Singapore supported the view of the Delegation of Switzerland that transmissions or streaming could not be considered as the object of protection. Streaming was a mode of signal delivery. It asked for clarification whether "Internet-originated streaming" referred to the copy of the content in a server or to the packet of electronic information.

82. The Chairman reconfirmed that the terminology in the paper would be refined and clarified at a later stage. He then invited the Committee to examine the issue of beneficiaries and national treatment. He further stated that there seemed to be a convergence of views as regards the beneficiaries. Most proposals included the criteria based on the location of the headquarters and the transmitter. As to national treatment, while most proposals opted for national treatment confined to rights specifically granted in the treaty, the proposal by the United States of America suggested broader national treatment akin to that provided in Article 5 of the Berne Convention.

83. The Delegation of Switzerland stated that instead of creating new categories of beneficiaries of protection, such as webcasters, the Committee should focus on possible new rights for traditional broadcasting organizations in the context of webcasting. The underlying investment in webcasting did not alone justify extension of protection to new beneficiaries. Furthermore it was in favor of national treatment confined to rights granted in the treaty similar to that under the WPPT.

84. The Delegation of the United States of America favored a broad view of national treatment based on the Berne Convention, rather than the limited notion in the WPPT, which had been the result of a compromise involving a package of different issues. It emphasized that the correct approach was to provide national treatment to the future rights to be granted under any new treaty, as well as with respect to rights under existing treaties. Regarding the beneficiaries of protection, the Delegation underscored that it was important to provide protection to the real actors in today's arena, including not only traditional broadcasters, but also cablecasters and webcasters. The Delegation noted that the definition of webcasters in its proposal could require some tightening up so that it did not sweep in everyone with just a web page. In respect of the article on beneficiaries in its proposal, the Delegation explained that it had been structured in the style of the points of attachment of the Rome Convention, a structure which adapted easily to the categories of beneficiaries identified in its treaty proposal.

85. The Chairman observed that, in respect of exceptions and limitations, there appeared to be far-reaching convergence among the various proposals, which principally relied on the provisions contained in the WPPT, with some ideas borrowed from the Rome Convention, and which applied the three-step-test. He felt that there was sufficient specificity among the proposals to start work on a draft final instrument on that issue. Regarding the issues of technological measures of protection and rights management information, the Chairman noted that the proposals thus far tabled had modeled their respective provisions on the articles in the WPPT and WCT, and that the Committee's work on those issues could accordingly proceed based on the proposals. He referred to the issues of term of protection, application in time, formalities and enforcement, and pointed out that there was a high degree of convergence with respect to the first three. Concerning enforcement, he recalled that that issue had been a difficult one at the Diplomatic Conference of 1996, and referred to the TRIPS Agreement and other WIPO treaties as potential examples as to how that issue might be addressed. The Chairman also raised the issue of reservations, and stated that that issue would be subject to a review of the final articles, and as such, was still open.

86. The Delegation of Canada, commenting on the issue of application in time, noted that under the current proposal the threshold signals protected would be fifty light years away from the earth.

87. The representative of the International Literary and Artistic Association (ALAI) referred to the Conference room paper and suggested enhancement of the protection of broadcasters in respect of the right of communication to the public in places accessible to the public against an entrance fee. Article 13(d) of the Rome Convention limited the exclusive right of communication to the public of television broadcasts to cases where that was done in places accessible to the public on payment of an entry fee. The representative of ALAI considered that such limitation of the scope of the right had become obsolete. In his view the prerequisite of an "entrance fee" should be replaced by the concept of "commercial gain." Broadcasters should be able to recoup part of the costs of their services in cases where their broadcasts were communicated to the public in places accessible to the public generating a commercial

gaintothe givene stablishment,evenifnoentrancefeewasrequired,suchasincafé'swhere clientswatchedthebroadcastofafootballmatch.

88. TherepresentativeoftheEuropeanBroadcastingUnion(EBU)saidthatanumberof aspectsintheproposalbytheUnitedStatesofAmericameritedfurtherconsideration.First,therightofpublicrenditionofbroadcasts,containedinArticle5(g)ofthatproposal,was limitedto“soundsandimagesembodiedinaudiovisualworks.”Itshouldbetakeninto accountthatun dersomenationallegislationthebroadcastofasportingeventwasnot consideredasanaudiovisualwork,andwouldbetherforeexcludedfromthescopeofthat Articleinanunjustifiedmanner.Second,thetimewasnotyetripetoextendprotectionto webcasters.Theinclusionofwebcastersasbeneficiariesofthetreatywouldtaketoomuch timeandeffortandwouldslowdownthecurrentdebate.Discussionsshouldtherefore concentrateonupdatingtherightsoftraditionalbroadcastingorganizations. Third,the distinctionbetweenthe natureofrightsaffordedunderArticles5and6oftheproposalofthe UnitedStatesofAmericawasnotclear.Itwasdoubtfulwhethersuchadistinction,basedon aquestionabledifferentiationofthevalueofthecontentembodiedinabroadcast,shouldbe carriedforward.Moreover,itwasdifficulttoascertainhowtherighttoprohibitwouldwork inpractice.InthecasewhereabroadcasteroftheUnitedStatesofAmerica,forinstance, boughttherightstobroadcastonprimetimeasportseventthathadtakenplaceinAustralia hoursbefore,andthatawebcaster,takingadvantageofthetimedifferencebetweenthe two countries,transmittedtheeventworldwide,itwouldnotbeclearwhethertherighttoprohibit wouldsufficetojustify speedygrantofacourtordertostopsuchtransmission.Incasethe serverwaslocatedinathirdcountry,complexprivateinternational lawissuescouldalso emerge.Moreover,itwouldalsobedoubtfulwhetherthewebcaster,especiallyifithad incurredsomefinancialrisks,wouldnotbeentitledtoclaimdamagesoncethetransmission hadbeeninterrupted.Inconclusion,therighttoprohibitdidnotappeartobewell designedin ordertocombatpiracy.

89. TherepresentativeoftheInternationalFederationofPhonogramProducers(IFPI) declaredthatthenewtreatyshouldnotfollowthemodeloftheWCTandWPPT.The differentnatureoftherespectiveactivitiesofauthors,performersandproducerswhocreated orproducedcontent,andthoseofbroadcasterswhichusedthecontentcreatedbyothers,had justifieddifferentialtreatmentinboththeRomeConventionandtheTRIPS Agreement.Such differentiationsshouldbefollowedinthecurrentprocess.Theprotectionaffordedto broadcastersshouldbelimitedtotheneedtocontroltheirsignalsandfightagainstpiracy. Evenifitwasnoteasytodistinguisharightagainstsignalpiracyfromtheexerciseofaright inthecontent,valuableeffortshadbeenundertakenin this sensebysomedelegations. Article 6oftheproposaloftheUnitedStatesofAmerica,evenifrequiringsomeredrafting, wasanexampleofthat.Moreover,atreatypreambledeclaringthatprotectionaffordedto broadcasterswouldnotaffectotherri ghtholdersmightnotbesufficient,intheabsenceofa carefuldefinitionoftherightsprovidedundersuchatreaty,topreventsuchprejudicein actualfact.Tothatend,broadcastersshouldnotbegrantedarighttoexploit,orobtain remunerationfromuseof,thecontentofotherri ghtholders.Secondly,theyshouldnot benefitfromarightofcontrolincaseswhereotherri ghtholdersdidnotenjoysucharight. Otherwise,thetreatyriskedcreatingandvalidatingbusinessmodelsforbroadcasterbased solelyonuseofotherri ghtholders'content.Finally,therepresentativeofIFPIrecalledher previousinterventionindicatingthatchangingthedefinitionofbroadcastingwouldamountto unjustifiedextensionoftherules,obligationsandprivilegesdevelopedforthat specificform ofexploitation.ShefurtherrecalledthattheChairmanoftheStandingCommittee had clarifiedthatforthetimebeingnotasingleproposalexplicitlyincludedwebcastingasan exampleofbroadcasting.Therepresent ativeofIFPIwarnedthatsomeoftheproposed

definitions of broadcasting, notably that of the European Community and its member States, could in her view be interpreted as including webcasting.

90. The representative of the Canadian Cable Television Association (ACTC) stated that, while there was consensus that, in theory, the neighboring rights of broadcasters in their signals should not interfere with rights of creators in the content carried by those signals, it was less clear how that principle could be applied in practice. There also seemed to be agreement that the new international instrument was required to achieve two objectives, namely, preventing piracy and protecting the investment by broadcasters in their signals. The neighboring right of the broadcasting organization in its signal should not be elevated to something akin to ownership of rights in the creative works carried by that signal. Where the owner of the copyright in the content was able to exploit it in other markets in a way that did not prejudice the rights acquired by the broadcaster, the broadcaster should not be entitled to step between the copyright owner and those other exploitations. The proposed right of cable retransmission raised important problems for the principles stated. A cable operator that, after paying copyright owners, retransmitted the content carried by a signal in the local broadcast area of the broadcaster should be considered as actually improving the broadcasting organization's activities in that area. In no case did that activity represent harm to the broadcaster's investment, indeed it could even be seen as promoting a greater return on that investment. Similarly, the retransmission of a signal in a distant market did not generally put at risk investment by the local broadcaster at the source of the retransmission. Therefore, where a cable retransmission was undertaken in a way that respected the rights of the owners of copyright in the programming, a neighboring right of cable retransmission did not appear necessary either in order to prevent piracy or to protect investment in the signals.

91. The representative of the Association of Commercial Television in Europe (ACT) stated that the Information Meeting had shed valuable light on the need to afford broadcasters a right of decryption, which he considered as an extremely important weapon in the armory of broadcasters. He disputed the notion that similar protection could be afforded by means of technological measures, as those were ancillary to substantive rights. Further, no right to encrypt, as such, existed. On the other hand, the representative of ACT rejected the idea of a protection of pre-broadcast signals based on the model of the Brussels Convention, which provided no proprietary right. Only a proprietary right would serve broadcasters to appropriately fight against piracy. Moreover, it was unclear how a simple obligation to provide adequate legal protection to pre-broadcast signals would operate in relation to national treaty provisions.

92. The Delegation of the North American Broadcasters Association (NABA) commended the proposals by the United States of America and the European Community for their inclusion of an exclusive right to authorize Internet retransmission. It referred to the cross-border problem in North America with regard to Internet retransmission of television signals and informed the Standing Committee of a bill which had been passed by the Canadian House of Commons and was before the Senate. Its objective was to preclude Internet retransmission of broadcast signals pursuant to a compulsory license and to require the authorization of broadcasters for any retransmission. That bill had been advocated by a broad coalition of broadcasters in Canada and the United States of America, as well as producers and other content owners. Broadcast signals were considered to be increasingly at risk of unlawful uses in the digital environment, and those risks had to be addressed in the new treaty. The Delegations said that broadcast flags and watermarks were possible mechanisms for protection of broadcast signals worth considering.

93. The representative of the International Federation of Actors (FIA) stressed that the primary object of discussion was to provide broadcasting organizations, and possibly also cablecasters, with a sufficient level of protection to fight the piracy of their signals. The protection available to broadcasters under the Rome Convention was still not available to cablecasters insofar as their original programs were concerned, while in a large number of national systems they were in fact granted the same protection as over-the-air or satellite broadcasters. Therefore, updating the protection of program-carrying signals was necessary to improve that balance. Claiming protection of the pre-broadcast and of the encrypted signals was considered fair and worthy of consideration at the international level. However, most of the other rights listed in the conference room paper effectively gave broadcaster the means to benefit from the commercial exploitation of the content – as separate from the signal. His organization was interested in receiving explanations on the rights of distribution of fixations, the importation of fixations, the making available of fixed broadcasts and the rental of fixations. In its view, the relationship between the new rights proposed and the signal, which was the only object of protection, was not clear and those rights clearly concerned the content. That being the case, even before considering the possibility of giving broadcasters any intellectual property rights to the exploitation of the content, one had to ensure adequate protection of the creative content. It would be impossible to grant new international protection to broadcasting organizations, which in no way should prejudice the rights of other rightholders, at a time when the level of international protection of audiovisual performers was not yet established. He reminded the Standing Committee that broadcasters already enjoyed an exclusive right in respect of the fixation of their broadcasts signal and any fixation made in violation of that right, and any subsequent use that was made of that fixation, was illegal *per se*. Therefore it was not necessary to include such specific provisions in respect of such illegal use in an international instrument.

94. A representative of the International Music Managers Forum (IMMF) stated that, in his organization's view, if the definition of fixation contained in Article 2(c) of the WPPT was to be accepted with regard to broadcasts, then the fixation of a broadcast would be analogous to depositing music on a CD or cassette. Any protection of fixations of broadcasts should aim first and foremost at the reduction of piracy rather than at granting rights in fixations as an extra protection for what was essentially a means of transmission. Broadcasters needed protection only to the extent required to carry on commercial activities, but once the content was saved in a fixation there was no longer a signal, and the means of transmission did not appear to need protection.

95. The representative of the International Confederation of Societies of Authors and Composers (CISAC), speaking also on behalf of the International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), welcomed the general philosophy that the rights granted under the new treaty should in no way affect the rights of the underlying creators. However, the organizations were not certain that attempts were not being made to extend protection of various categories of neighboring rights in a manner that would affect the existing balance of rights. In their view, Article 3(2)(b) in the proposal of the United States of America was not consistent with the definition of broadcasting in Article 2(a) of the same proposal, and that needed clarification. A further example of lack of clarity was the expression “facility, situated in another contracting party” contained in the same proposal. In relation to webcasting, the facility could be easily removed from one jurisdiction to another which would create confusion. Any extension of rights needed to be carried out in a properly regulated fashion. The organizations shared the concern expressed by the Delegation of Switzerland with regard to delimiting what exactly would qualify for protection and what constituted investment. The boundaries of intellectual

property seemed to be extended by moving from the criterion of creativity to that of investment.

96. The representative of the National Association of Broadcasters (NAB) supported moving the rights of retransmission over the Internet, and of deferred broadcasting/cable transmission based on a fixation, to the list of objects of protection in conference room paper CRP/SCCR/8/1. He highlighted the importance of having an exclusive right with respect to the retransmission of television signals over the Internet, which was justified by real life experiences. Referring to the proposal of Argentina on limitations and exceptions contained in Article 6(d) of document SCCR/8/5, which provided the possibility that cable distribution of a wireless broadcast would not be considered as retransmission or communication to the public, he stated that broadcasters needed an exclusive right with respect to the retransmission of their signals on cable systems on an international basis. Retransmission of purely national programs would not be covered by an international treaty. The retransmission of broadcasts by cablecasters in distant markets was a particularly harmful act. Broadcasters were not pure users of content but had an equally strong case for protection as other beneficiaries under the WPPT.

97. The representative of the International Federation of Film Producers Associations (FIAPF) supported the creation of legal instruments that would enable broadcaster to be better protected and fight against piracy. However, he shared the view expressed by other rightholders' organizations that the rights granted to broadcasters should not interfere with the economic rights enjoyed by other existing rightholders. In that context, it appeared appropriate that only rights that were indispensable to protect the broadcasters' signal be considered by the Committee. He expressed concern that some of the rights listed in conference room paper CRP/SCCR/8/1 would effectively extend the protection of broadcasting organizations beyond what was required to fight piracy. A typical example in that regard was the distribution right which clearly pertained to rights protecting content. The representative concluded that there was no implicit acceptance of all rights proposed for inclusion in a future treaty.

98. The Delegation of Australia raised the issue of what constituted a reproduction of a broadcast in terms of the duration of the broadcast which was copied or reproduced. Document SCCR/8/INF/1 referred to the issue of whether a photograph of a TV transmission could be a fixation, and here iterated that no conclusion had been reached on that issue when the Rome Convention was adopted. Australian law considered that a photograph of a TV transmission could constitute a reproduction, and that could lead to the possible conclusion that it represented a broadcast. The minimum length of a TV transmission constituting a broadcast needed to be addressed properly by the Standing Committee.

99. The Delegation of Switzerland emphasized that experience has shown that some right of distribution had to be granted to broadcasters in order to enable them to fight piracy efficiently. It recalled that the right of distribution in the context of the WPPT had also been considered to be of great help in the fight against piracy.

100. The Delegation of Senegal supported the view of the Delegation of Algeria and stated that a proper balance of different rights was necessary, and it advocated a speedy adoption of an international treaty on the protection of audiovisual performances as well as a treaty for broadcasting organizations. The protection of webcasters should be established in a separate instrument.

101. The Delegation of Pakistan, referring to the proposals submitted by the United States of America, and to the intention expressed by that Delegation to further clarify a number of issues on the basis of questions raised in the Committee, stated that the Delegation looked forward to a revised proposal in due time to allow it to conduct an in-depth analysis.

POSSIBLE SUBJECTS FOR FUTURE REVIEW

102. The Chairman, referring to document SCCR/8/2, prepared by the Secretariat, invited delegations to present their comments and priorities.

103. The Delegation of Barbados, speaking on behalf of GRULAC, underlined its understanding that the new issues proposed would not necessarily lead to new international treaties. It would be valuable to have discussions, exchange of views or recommendations on the subjects proposed. GRULAC had a particular interest in the following topics: voluntary copyright recordal systems; technological measures of protection and limitations and exceptions; ownership of and authorization to use multimedia products; and the economics of copyright. Commissioning studies in those areas was a possible way forward that could help Member States in systematizing the critical issues involved and getting a better sense of their national interests.

104. The Chairman confirmed the understanding that the item to be considered would not necessarily lead to new international instruments. Flexibility was essential for the proposed process. New items could be added to the list and priorities could be adjusted. The tools available could include studies, symposia, information meetings and meetings of groups of consultants and might eventually lead to some of the issues being taken onto the Agenda of the Standing Committee.

105. The Delegation of Hungary stated that all subjects proposed needed to be taken up by the Standing Committee sooner or later and believed that the Secretariat of WIPO was well equipped to do the necessary preparatory work. The subjects vastly differed in nature. In some cases discussions on them could gradually lead to the adoption of guiding principles or model provisions, and in other cases the consideration could lead to providing better information to policymakers. With regard to the implementation of the WCT and the WPPT and the responsibility of Internet service providers, collection and provision of information seemed an appropriate focus at present. The subject of applicable law in respect of international infringement was linked to other general issues of law, but deserved nevertheless separate consideration from the point of view of copyright and related rights. The Delegation proposed that work be launched at the earliest possibility on the issue of ownership and authorization to use multimedia products. Guidance on the economics of copyright was also very important. Its country intended to launch a national study on the economic aspects of copyright and could benefit from appropriate methodological advice from WIPO in that regard. It had undertaken activities in relation to studying aspects of collective management of copyright and related rights and considered it particularly important that WIPO explore the functioning of efficient collective management systems and their interoperability in the global markets. An interesting subject that was proposed was the development of a methodology of fixing tariffs, as it could be helpful to copyright tribunals or administrative authorities. Work on folklore needed to be coordinated with the program of the Intergovernmental Committee (IGC) on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. As some of the issues could have different perspectives in different regions, such as the economic aspects of copyright, it was suggested that regional

meetings be convened. In terms of the organization of the work on those subjects, the Delegation proposed the possible creation of open-ended working groups or groups of consultants.

106. The Delegation of Denmark, speaking on behalf of the European Community and its member States, underlined that the first priority of the work of the Standing Committee undoubtedly should be the completion of its current unfinished business. Finalizing the issues related to the protection of broadcasters, non-original databases and audiovisual performances was indispensable before taking up new issues. It welcomed the exchange of views on the topic to be taken up after the current Agenda was completed. In terms of priority issues, the European Community and its member States favored the consideration of applicable law, notably the choice of law in respect of international transactions of works, as well as the resale right (*droit de suite*). In that regard, it was recalled that half of the Member States of the Berne Union had implemented Article 14ter of the Berne Convention. In the summer of 2001 the European Community had adopted a new Directive in that regard. One way of dealing with the issue was to make Article 14ter compulsory. On those two issues, it proposed launching studies at the present stage. Other issues of interest were digital rights management, including the collective management of rights, exceptions to and limitations on exclusive rights, including the needs of blind or visually impaired people, the liability of Internet service providers and the economics of copyright. The issues of folklore and enforcement were considered inappropriate for consideration by the Standing Committee as they were dealt with in the IGC of WIPO.

107. The Delegation of the Russian Federation noted the importance and the timeliness of the list of issues prepared by the Secretariat. All of the proposed issues were of great interest to governments, academic and business circles and deserved adequate attention. It particularly supported the proposal by Denmark on behalf of the European Community and its member States. The issues were expected to be addressed by studies, seminars and conferences. An important topic for the future that was felt missing from the list was the use of copyright and related rights in the digital environment. In terms of priorities, applicable law seemed a topic of high priority especially the international infringement of rights. Another issue of interest, particularly for the Russian Federation and the CIS countries, was the fight against piracy. In that connection, the issue of optional records systems of copyright and other rights appeared of great interest as well. The Delegation informed the Committee about a meeting of the Government of the Russian Federation, held in October, which discussed measures to combat piracy, including an optional system for the registration of copyright. The issue of technological measures of protection and limitations and exceptions were of interest in the context of the implementation of the WCT and WPPT. However, the issues proposed for future consideration had to follow the successful completion of the work on the current issues on the Agenda of the Standing Committee.

108. The Delegation of Norway stated that all the subjects included in document SCCR/8/2 were very important for the copyright and related rights area. However, it was necessary to keep in mind that there was still unfinished business regarding the protection of audiovisual performances. It was also necessary to keep the balance among the rights of different related rightsholders. Here recalled the consensus reached on 19 out of 20 Articles of the proposed treaty discussed during the Diplomatic Conference on the Protection of Audiovisual Performances in 2000. In that context, as discussions on the question of applicable law could help resolve the pending issues, priority should be given to that subject.

109. The Delegation of Japan, referring to the unfinished business, stated that the work of the Standing Committee should not be delayed by embarking on work on the various proposed subjects. The consideration of future work should not be based on the idea of creating new international instruments. Applicable law was an appropriate issue to be taken up by WIPO as the use of the Internet was widely spread around the world. As regards the WCT and the WPPT implementation question, the Delegation was very interested in knowing how Internet-related provisions had been implemented in member countries. A survey in that regard would be useful in order to know the effectiveness of such implementation. However, extreme caution was necessary when creating guidelines for technological measures. Such guidelines could lead to a uniform interpretation of those measures, and consequently flexibility would be lost. Therefore, even if the Standing Committee took up that issue, the work should be limited to collecting actual examples. With respect to folklore, the Delegation recalled that the IGC was in charge of discussions on that matter. Given the limited resources of WIPO, the Delegation did not consider it appropriate to discuss the same issue in parallel in several bodies within the same organization. O

110. The Delegation of the United States of America joined other delegations in recalling the need to continue discussions on pending issues. It was of the view that the Standing Committee should not rush to undertake studies in many of the areas mentioned in document SCCR/8/2, as it could slow down the existing work. That, however, did not prevent the Standing Committee from evaluating the progress of that work, particularly on the questions of applicable law with respect to international infringements. Also, the Delegation thought that WIPO could contribute greatly by focusing work on questions of the economics of copyright. Many of the other issues should be taken up when the time was right. As regards the issues of technological measures of protection, limitations and exceptions and their interaction, it referred to the statement of the Delegation of Japan. If WIPO decided to discuss that issue, it was necessary to collect actual, as distinguished from theoretical, experience. The work should not be an attempt to provide a survey aimed at wording common guidelines in that area. With regard to folklore matters, as the Delegation of Japan had stated, it was important to spend resources wisely and therefore discussions on that matter should remain in the IGC. Certainly, in that Committee, special consideration could be given to how copyright protection could contribute to the protection of expressions of folklore. In addition, the Delegation expressed serious concerns about the item on ownership of rights in multimedia productions. It did not believe that that matter was separate from the ordinary rights clearance regime. Licensing systems had been established and the market was successfully functioning on the basis of those systems. Therefore, a very low priority should be given to that matter if it was taken up at all.

111. The Delegation of Malawi emphasized that there were certain issues of great importance for least developed countries in document SCCR/8/2. The subject of the economics of copyright had first priority. Almost no surveys of the economic contribution of copyright to national economies had been done in developing countries. This meant that governments were unable to set appropriate policies, notwithstanding the wealth of local creative raw material. As to collective management of copyright and related rights, efforts should be made to create or improve the relevant systems or establish societies where none existed. Finally, the protection of folklore also deserved special consideration by the Standing Committee notwithstanding the fact that the IGC would also be dealing with the matter.

112. The Delegation of Senegal stated that while there were many issues to be discussed, because of the very dynamic of technologies, the Standing Committee had to bear in mind that there was an imperative need to achieve the rapid signing of a legal instrument for audiovisual performances. Among the new issues which deserved top priority were: the question of copyright infringement and private international law; the *droit des suites* or resale right, which had been rarely implemented in national laws but could be enshrined at the international level; the economic of copyright; and international protection of folklore. In addition, it was very important to raise awareness among copyright and related rights holders of how useful collective management systems were for the protection of their rights. Apart from those issues, the Delegation recalled that the *suigeneris* protection of databases was another matter pending since 1996.

113. The Delegation of Egypt agreed with the statement made by the Delegation of Barbados concerning the fact that discussions on the different subjects included in document SCCR/8/2 did not necessarily entail the adoption of new international norms. It further highlighted that it was crucial to establish a balance between developed and developing countries when selecting subjects for future work and defining future priorities. It also stressed the importance of reaching a decision on the protection of audiovisual performances as well as finalizing work concerning the protection of the rights of broadcasting organizations before engaging the Standing Committee with new subjects. Regarding the different subjects included in document SCCR/8/2, the Delegation expressed the importance it attached to the protection of folklore, and thus affirmed that it should not be removed completely from the Agenda of the Standing Committee, but its consideration could be complementary to the work done in the IGC. It also gave priority to the economic of copyright as Egypt had flourishing cultural industries and was seeking to further maximize their contribution to its economy. Collective management was also an important tool for economic and cultural development which needed to be enhanced as it was witnessed by discussions on this issue during the session of the Permanent Committee on Cooperation for Development Related to Intellectual Property which had taken place at WIPO the week before. Finally, it believed that it was necessary to shed further light on the question of applicable law in relation to international infringements.

114. The Delegation of El Salvador recalled that many countries in Latin America had a wealth of folklore. It was a matter of great concern to protect adequately such folklore through copyright law although many expressions were already in the public domain. In that respect, it suggested the preparation of a study that covered in depth that kind of protection. In addition, WIPO should also pay great attention to the protection of folklore in the Central American region, from Panama to Guatemala, and raise awareness in that regard.

115. The Delegation of Canada supported the statement made by the Delegation of Denmark on behalf of the European Community and its Member States relating to a study on the limitations and exceptions of copyright and related rights and the needs of blind and visually impaired people. It suggested including also the needs of the deaf and hearing-impaired and possibly those with other types of disabilities. Perhaps, it should not be necessarily a study linked to limitations and exceptions in general, but as a specific study in its own right. Finally, from a purely stylistic point of view, it suggested that the relevant matter in document SCCR/8/2 refer to "applicable law in respect of international exploitation and use of protected subject matter."

116. The Delegation of Switzerland stated that the issues laid out for future consideration were highly relevant and interesting. As a number of delegations had already remarked, it was necessary to finish what was already before the Committee. In order to fully complete the work of updating copyright and related rights to the new technologies and create the necessary balance between the different categories of rightholders, it was necessary to remove the shortcomings in the protection of audiovisual performances as well as in the protection of broadcasting organizations. As regards the latter, those shortcomings would look bigger if other categories of rightholders were added to the scope of protection. Therefore, striking the balance among the different related rights holders was necessary before discussing any other new subject matter. If priorities needed to be set, the protection of folklore would be in first place as it was a promise pending since 1996. Other priorities would be the question of applicable law and collective management of rights.

117. The Delegation of Singapore was particularly interested in the economics of copyright, as its country would benefit from the WIPO conceptual and methodological guidelines under preparation. Those guidelines would help the measurement of the economic contribution and volume of the creative industries, and the development of appropriate support policies. Having WIPO's involvement would also guarantee an international and objective scope. As regards limitations and exceptions, the Delegation was open as to how the subject matter might be handled, for instance, through seminars or conferences to facilitate information exchange on how to achieve a balance between copyright and exceptions or fair use. It joined the Delegation of Canada in proposing to focus on the special needs of certain communities such as the visually and hearing-impaired or the less privileged users, and even libraries. As regards the latter, the Delegation was interested in seeing an exchange of information on how the new treaties affected the activities of those users. Certainly, all those new areas of possible discussion in the future should not affect in any way the current work of the SCCR.

118. The Delegation of China stated that all the items in document SCCR/8/2 merited consideration and attention, but priorities needed to be identified. It classified the issues in two categories: issues that required international standards and issues that needed more discussion or the preparation of guides or studies. The first category, as in the case of protection of broadcasting organizations, included the protection of folklore. As regards the protection of broadcasting organizations, it suggested that the Secretariat invite a small group of representatives and experts to meet and develop the first draft of a treaty for broadcasters. Furthermore, the protection of audiovisual performances should be reviewed and international discussions resumed, as that was a matter pending since the year 2000. The protection of folklore had been discussed for more than 20 years. The Delegation asked that it be accorded treatment, and that the Secretariat undertake some survey work, as well as looking into the possibility of establishing regional treaties. Regarding the question of applicable law concerning copyright infringement, it advocated more discussion on that matter. It also stressed the importance of preparation of guides and studies to help countries strengthen their copyright and related rights systems of protection and the preparation of legislation. In that regard, it complimented WIPO for some of its useful publications on different aspects of copyrights such as the Collective Management of Copyright and Related Rights. In addition, it recognized that the Guide to the Berne Convention, for instance, had been a very useful tool to its Government when acceding to that Convention. A similar task needed to be undertaken in respect of the WCT and WPPT.

119. The Delegation of Nigeria stated that it had identified two priority issues for the future work of the Committee. The first one related to the economic of copyright, and the second related to the collective management of copyright and related rights. There was a pressing need to convince governments to devote more resources to copyright activities. On other issues, such as folklore and enforcement, the Delegations supported the intervention of the Delegation of Denmark on behalf of the European Community and its member States and was also of the opinion that there was no need to duplicate the on-going work taking place in another Committee.

120. The Delegation of India stated that the Standing Committee was then seized with the very important issue of protection of broadcasters. The two 1996 Internet treaties had been concluded but Member States had yet to consolidate the gains of those two treaties. Many Governments were still in the process of ratifying the treaties. There was a need for WIPO to help Governments in ratifying those treaties and also in clarifying various concerns raised by Governments regarding a new proposed broadcaster treaty. The new items proposed were undoubtedly important, but it was perhaps not the right time to take up new subjects. The Delegations said that all delegations had an unfinished agenda, as previous speakers had stated, and that they had to put all their effort to make a balanced new instrument for broadcasters. Having said that, the Delegation felt that WIPO had to extend support and take up studies on the economic impact of copyright and also the collective management of copyright and related rights. The Delegation also felt that the subject of folklore was very important for countries like India which were very rich in folklore. It said that it would be important to examine the relationship of protection of folklore within the existing conventional branches of intellectual property like trademark, industrial design, etc. It had to be taken up even outside the Intergovernmental Committee (IGC). It would only help the IGC in taking up some stand out that would compliment its efforts and should be taken up on priority.

121. The Delegation of Pakistan stated that its Government had undertaken steps to develop collective management and it expected WIPO's support to consolidate the results so far.

122. The Delegation of Colombia subscribed to what had been said by the Delegation of Barbados, which had taken the floor on behalf of GRULAC. It praised the quality of the documents submitted by WIPO, whose proposals undoubtedly eased the burden of responsibility on the Committee but did not exempt it from the need to fulfil its agenda, which still had outstanding items on it, notably the unfinished business concerning audiovisual performers. The Delegation did however call attention to the question whether the real concern regarding the validity of copyright actually had to do with the new issues raised; it mentioned by way of example how, in spite of the existence of the 1996 WIPO Treaties and the TRIPS Agreement, piracy continued to plague copyright-protected property, and how collective management, at least in Latin America and the Caribbean, with few exceptions failed to reach the standards of efficiency attained by societies operating in developed countries. This situation was to a large extent due to a want of the economic diagnosis that would enlighten the governments of the countries concerned on the economic aspects of copyright, and induce them to use those aspects to design the appropriate public policy; the Delegation therefore favored the conduct of additional studies on the subject. It also spoke of its concern regarding a trend in some Latin American legislation whereby the notion of works produced on commission or under an employment contract was causing the ownership of the rights in the works or performances concerned to shift from the original owners to others, with the result that neither authors nor performers managed to carry on a sustainable economic activity by exploiting the content of their creative work. It ended by pointing to the

need to counteract the growing perception of modern copyright as not benefiting authors and performers and therefore constituting a new form of social exclusion.

123. The Delegation of Australia stated that the current work program had to be completed before new topics could be addressed by the Committee. It supported the intervention of the Delegation of Canada relating to possible studies that could be undertaken in respect of exceptions and limitations for visually -impaired and disabled people that would facilitate their access to copyright protected material. The Delegation considered the liability of Internet service providers, applicable law in relation to copyright infringement and collective management of rights as priority issues for the future.

124. The Representative of UNESCO stated that it was interested and pleased to note the set of issues that the Member States had proposed to the Committee; it regarded as priorities on the one hand the protection of audiovisual performers and the drafting of a statute for the purpose, and on the other hand the implementation of the WCT and WPPT, particularly their provisions on exceptions and limitations. UNESCO wished to inform the Committee of the initiative that it had embarked upon, starting with an account of its nature and of the stakes involved seen from an international viewpoint. Entry into the information society, characterized as it was by the emergence of new technology, was not expected to turn on their heads the ethical values recognized by the international community; it did however offer new opportunities at the same time as it presented specific problems to which tangible responses were essential. The balance that existed between rights and interests in the analogue universe should not be upset as a matter of principle in its digital counterpart, but if it was to be maintained in the new situation it did not seem sufficient just to proclaim the need for a status quo. So reaffirming the rights and interests of the owners of rights and the public in the digital environment, and securing a fair balance between them, entailed asking certain questions (without there being any suggestion of going beyond the exceptions and limitations established by international consensus in the form of the Berne and Rome Conventions, the TRIPS Agreement and the 1996 WIPO treaties), but first and foremost it entailed drawing up an inventory and seeking the opinion of those concerned. The mutual commitments made by the international community on the adoption of the WIPO Internet Treaties in 1996 were set in stone and beyond discussion. However, practical questions did arise in the search for a fair balance between the interests at stake, which the Treaties likewise advocated for the digital environment, also showing national legislation the way to achieve it by means of the triple test (or three -stage test). It was for States to adopt the provisions that they required for the purpose, but it was important to make allowance for the implications of technological progress for the blurring of boundaries - commonly known as "deterritorialization" - which made an excessive divergence of legislative approach liable to prolong the present legal uncertainty, thereby jeopardizing both the legitimate rights of authors and lawful access to knowledge. In the light of that realization the UNESCO General Conference had asked its Director-General to "devise new strategies suited to the digital environment." The aim pursued was to hasten a convergence of opinions in order to avoid all the risks mentioned earlier that might arise out of long drawn -out legal uncertainty. What one had to do was to arrange a meeting of minds between the various stakeholders with a view to gradually achieving an acceptable *modus vivendi*. Such a step would have no chance of success unless all those concerned agreed to talk, and UNESCO made that the major prerequisite for continuing its work in the interest of legitimate rights in the context of the digital revolution. UNESCO's first move had been to approach WIPO with a view to a concerted joint effort, but WIPO had declined the invitation. UNESCO was pleased that WIPO had since included the item among those to be considered by the Committee. It supported the delegation that had

submitted and subscribed to the proposal, and reiterated its willingness to work in close cooperation with WIPO and all groups concerned.

125. The Chairman stated that significant progress had been achieved in the discussion relating to the protection of broadcasting organizations. He presented to the Committee his tentative projection of the timeframe for future work in the best cases scenario. The next step would be the ninth session of the Standing Committee which would take place from June 23 to 27, 2003, at the end of which further assessment of the progress achieved would be made. If there was good progress, the conclusions of that meeting could then be communicated to the WIPO General Assemblies in September 2003, which could decide whether a Diplomatic Conference could be convened in 2004. The Chairman urged all delegations to consider their negotiating positions in a spirit of compromise, with a view to achieving a positive outcome of the work in the next session of the Committee. The tenth session of the Standing Committee would take place in November 2003 and would then be the occasion for finalizing discussions on the remaining issues of the Agenda. If all went smoothly, a preparatory meeting of the Diplomatic Conference could be organized around the first quarter of 2004.

126. The Standing Committee made the following decisions:

(a) Databases: the issue would be carried forward to the Agenda of the next session (ninth) 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 were invited to submit their final, possibly revised, proposals on the issue, preferably in treaty language, to be received by the Secretariat on or before February 28, 2003;

(c) The next session of the SCCR would take place from June 23 to 27, 2003.

(d) An item on "Other issues for review" would be kept on the Agenda for the next session of the SCCR so that the Secretariat could report on the progress of work done on those issues.

(e) An information meeting would be organized on the morning of the first day of the next session of the SCCR. The theme of that meeting would be chosen by the Director General of WIPO, taking into account relevant developments on issues before the SCCR.

ADOPTION OF THE REPORT

127. The Standing Committee unanimously adopted this report.

128. The Chairman closed the session.

[Annex follows]

ANNEXE/ANNEX

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

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Glenn WONG, Legal Counsel, Intellectual Property Office of Singapore (IPOS)

SLOVAQUIE/SLOVAKIA

Barbara ILLKOVÁ (Mme), représentant permanent adjoint, conseiller, Mission permanente, Genève

SLOVÉNIE/SLOVENIA

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Miha TRAMPUŽ, Legal Counsel, Copyright Agency of Slovenia, Ljubljana

SOUDAN/SUDAN

Christopher Leonardo JADA, Second Secretary, Permanent Mission, Geneva

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

Thawatchai SOPHASTIENPHONG, Deputy Director General, Department of Intellectual Property, Ministry of Commerce, Bangkok

Pajchima TANASANTI (Mrs.), Director, Copyright Office, Department of Intellectual Property, Bangkok

Supark PRONGTHURA, First Secretary, Permanent Mission, Geneva

TRINITÉ-ET-TOBAGO/TRINIDAD AND TOBAGO

May-Ann RICHARDS (Ms.), Deputy Permanent Representative, Permanent Mission, Geneva

TUNISIE/TUNISIA

Mounir BENAJIBA, conseiller, Mission permanente, Genève

TURQUIE/TURKEY

Yasar OZBEK, conseiller juridique, Mission permanente, Genève

UKRAINE

Olga IYEVINYA (Ms.), Deputy Head, Copyright and Related Rights Division, State Department of Intellectual Property, Kyiv

URUGUAY

Carlos TEYSERAROUCO, Presidente, Consejo de Derecho de Autor, Montevideo

VENEZUELA

Fabio DICERA, Consejero, Misión Permanente, Ginebra

VIETNAM

VU Huy Tan, conseiller, Mission permanente, Genève

ZIMBABWE

Dominico CHIDAKUZA, Law Officer, Ministry of Justice, Legal and Parliamentary Affairs, Harare

John NANGOMBE, Law Officer, Ministry of Justice, Harare

COMMUNAUTÉ EUROPÉENNE (CE)/EUROPEAN COMMUNITY (EC)

Jörg REINBOTHE, Head of Unit, Copyright and Neighbouring Rights, Internal Market Directorate-General, Brussels

Rogier WEZENBEEK, Administrator, Copyright and Neighbouring Rights, Internal Market Directorate General, Brussels

Patrick RAVILLARD, Principal Administrator, Permanent Delegation, Geneva

II. ORGANISATIONS INTERGOUVERNEMENTALES/
INTERGOVERNMENTAL ORGANIZATIONS

BUREAU INTERNATIONAL DU TRAVAIL (BIT)/INTERNATIONAL LABOUR OFFICE
(ILO)

John MYERS, Industry Specialist, Media and Entertainment, Geneva

Flerida Ruth ROMERO (Ms.), Retired Justice, Supreme Court of the Philippines, Geneva

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

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

ORGANISATION INTERNATIONALE DE LA FRANCOPHONIE (OIF)

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

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, Counsellor, Permanent Delegation, Geneva

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

Elias BELARIBI, Director of ASBU Exchange Center, Tunis

III. ORGANISATIONS NON-GOUVERNEMENTALES/
NON-GOVERNMENTAL ORGANIZATIONS

Associação Brasileira de Emisoras de Rádio e Televisão (ABERT) : Alexandre KRUEL
JOBIM (Legal Counsel, Brasília)

Associação Brasileira de Propriedade Intelectual (ABPI) : Jose-Antonio FARIA -CORREA
(President, Rio de Janeiro)

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

Association des organisations européennes d'artistes interprètes (AEPO)/Association of
European Performers' Organisations (AEPO) : Xavier BLANC (secrétaire général,
Bruxelles); Marie GYBELS (Mme) (Bruxelles)

Association de télévision commerciale européenne (ACT)/Association of Commercial
Television in Europe (ACT) : Petra WIKSTRÖM (Ms.) (European Affairs Manager,
Brussels); Tom RIVERS (Adviser, London); Claus GREWENIG (Multimedia Law, Berlin)

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

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

Bureau international des sociétés gérant les droits d'enregistrement et de reproduction
mécanique (BIEM)/International Bureau of Societies Administering the Rights of Mechanical
Recording and Reproduction (BIEM) : Willem WANROOIJ (Public Affairs (BUMA/
STEMRA), The Hague)

Chambre de commerce internationale (CCI)/International Chamber of Commerce (ICC) :
Mark TRAPHAGEN (Paris)

Confédération internationale des éditeurs de musique (CIEM)/International Confederation of
Music Publishers (ICMP) : Jenny VACHER (Mrs.) (Chief Executive, Paris)

Confédération internationale des sociétés d'auteurs et compositeurs (CISAC)/International
Confederation of Societies of Authors and Composers (CISAC) : David UWEMEDIMO
(directeur juridique, Neuilly-sur-Seine, France); Fabienne HERENBERG (Mme)
(responsable des relations avec les organisations internationales, Neuilly-sur-Seine, France)

Copyright Research and Information Center (CRIC) : Samuel Shu MASUYAMA (Director,
Legal Department, Tokyo); Yoshiji NAKAMURA (Tokyo)

Digital Media Association (DiMA) : Seth GREENSTEIN (Counsel, Washington, D.C.)

European Bureau of Library, Information and Documentation Associations (EBLIDA) :
Teresa HACKETT (Ms.) (Director, The Hague)

European Cable Communications Association (ECCA) : Peter KOKKEY (General Secretary, Brussels); Thomos ROUHENS (Legal Advisor, Brussels)

European Visual Artists (EVA) : Carola STREUL (Mme) (secrétaire générale, Bruxelles)

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 LABOUVERIE (Mme) (Paris)

Fédération ibéro-latino-américaine des artistes interprètes ou exécutants (FILAIÉ) / Ibero-Latin-American Federation of Performers (FILAIÉ) : Luis COBOS PAVÓN (Presidente, Madrid); Miguel PÉREZ SOLÍS (Asesor Jurídico, Madrid)

Fédération internationale de l'industrie phonographique (IFPI) / International Federation of the Phonographic Industry (IFPI) : Maria MARTIN -PRAT (Ms.) (Deputy General Counsel, Director of Legal Policy, London); Neil TURKEWITZ (Executive Vice President, Washington, D.C.); Ute DECKER (Miss) (Senior Legal Adviser, Legal Policy Department, London); Olivia REGNIER (Ms.) (Senior Legal Adviser, European Affairs, Brussels); Raili MARIPUU (Regional Expert for Eastern Europe, Brussels)

Fédération internationale des acteurs (FIA) / International Federation of Actors (FIA) : Dominick LUQUER (secrétaire général, Londres); Mikael WALDORFF (General Secretary, Danish Actor Federation (DAF), Copenhagen); Bjørn HØBERG -PETERSEN (avocat, Copenhague)

Fédération internationale des associations de distributeurs de films (FIAD) : Gilbert GRÉGOIRE (président, Paris)

Fédération internationale des associations de producteurs de films (FIAPF) / International Federation of Film Producers Associations (FIAPF) : Bertrand MOULLIER (directeur général, Paris); Valérie LÉPINE -KARNIK (Mme) (directrice générale adjointe, Paris)

Fédération internationale des journalistes (FIJ) / International Federation of Journalists (IFJ) : Pamela MORINIÈRE (Mme) (coordinatrice campagne droits d'auteur, Bruxelles); Alexander SAMI (Fédération suisse des journalistes, Fribourg, Suisse)

Fédération internationale des musiciens (FIM) / International Federation of Musicians (FIM) : Benoît MACHUEL (secrétaire général, Paris); Jean VINCENT (consultant, Paris)

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

Institut interaméricain de droit d'auteur (IIDA) / Inter-American Copyright Institute (IIDA) : Ricardo ANTEQUERA PARILLI (Presidente, Caracas); María Marisol OCHOA GIMÉNEZ (Sra.) (Asistente a la Presidencia, Caracas); Juan Ramón OBÓN LEÓN (Vice-Presidente por México, México, D.F.); María Teresa OBÓN GARCÍA (Sra.) (Asistente a la Vice-Presidente, México, D.F.)

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

International Intellectual Property Alliance (IIPA) : Fritz ATTAWAY (Advisor, Washington, D.C.)

International Music Managers Forum (IMMF) : Peter JENNER (Chairman, London); Wim REIJNEN (Vice-Chairman, London); Nick ASHTON-HART (Special Representative to the United Nations (UN), London); David Richard STOPPS (Special Representative to the United Nations (UN), London)

International Video Federation (IVF) : Theodore SHAPIRO (Legal Adviser, Brussels); Jim WILLIAMS (Advisor, California); Scott MARTIN (Los Angeles); Shira PERLMUTTER (Ms.) (New York)

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

National Association of Commercial Broadcasters in Japan (NAB -Japan) : Shin-ichi UEHARA (Director, Copyright Division, Asahi Broadcasting Corp. (ABC), Tokyo); Masataka KOBAYASHI (Copyright and Contract Control Department, Tokyo); Fuyuko KITA (Miss) (Rights Administration, Fuji Television Network Inc., Tokyo); Hidetoshi KATO (Program Contract Department, Television Tokyo, Channel 12 Ltd. (TV Tokyo), Tokyo); Mitsumasa MORI (Yomiuri Telecasting Corp. (YTV), Osaka); Honoo TAJIMA (Deputy Director, Copyright Division, Tokyo); Reiko BLAUENSTEIN-MATSUBA (Mrs.) (Interpreter, Geneva); Yuko MATSUOKA (Mrs.) (Consul tant Interpreter, Tokyo)

North American Broadcasters Association (NABA) : Erica REDLER (Ms.) (Chairman, Legal Committee; General Counsel, Senior Vice President, Legal Affairs, Canadian Association of Broadcasters (CAB), Ottawa); Alejandra NAVARRO GALLO (Ms.) (IP Attorney, Televisa, México)

Union de radiodiffusion Asie-Pacifique (URAP)/Asia-Pacific Broadcasting Union (ABU)

Maloli ESPINOSA-MANALASTAS (Mrs.), Vice-President, Government Affairs, ABS-CBN Broadcasting Corporation, Quezon City

Jim THOMSON, Office Solicitor, Television New Zealand, Auckland

Ryohei ISHII, Member, Copyright Working Party, Tokyo

Atsushi IIZUKA, Member, Copyright Working Party, NHK -Japan, Tokyo

Jose NOLAN, AVPI International M.D. ABS-CBNEurope, Milan, Italy

Union des radiodiffusions des Caraïbes (CBU)/Caribbean Broadcasting Union (CBU)

Cherie Sue Ann JONES (Miss), Legal Advisor, Board Secretary, Bridgetown

Union européenne de radio-télévision (UER)/European Broadcasting Union (EBU)

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Union internationale des confédérations de l'industrie et des employeurs d'Europe (UNICE)/
Union of Industrial and Employers' Confederations of Europe (UNICE)

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Union internationale des éditeurs (UIE)/International Publishers Association (IPA)

Benoît MÜLLER, secrétaire général, Genève

Union mondiale des aveugles (WBU)/World Blind Union (WBU)

John WALL, President, KB, CBE, European Union of the Blind, Paris

David MANN, Copyright Campaign Officer, Madrid

Marilyn OLDERSHAW (Ms.), Copyright Officer, Madrid

Henri-Jean CHAUCHAT, Paris

Jeanne CHAUCHAT (Mrs.), Paris

Union Network International – Media and Entertainment International (UNI – MEI)

Johannes STUDINGER, Deputy Director, Brussels

IV. BUREAU/OFFICERS

Président/Chairman: Jukka LIEDES (Finlande/Finland)

Vice-présidents/Vice-Chairmen: SHEN Rengan (Chine/China)
Graciela Honoria PEIRETTI (Mrs.) (Argentine/Argentina)

Secrétaire/Secretary: Jørgen BLOM QVIST (OMPI /WIPO)

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

Secteur du droit d'auteur et des droits connexes/Copyright and Related Rights Sector:
Geoffrey YU (sous -directeur général/Assistant Director General); Barbara C. PIDERIT
(Mme) (administratrice de programme/Program Officer); Dimiter GANTCHEV (consultant
principal/Senior Consultant); Richard OWENS (consultant principal/Senior Consultant);
V́ctor V. ÁZQUEZ LÓPEZ (consultant principal/Senior Consultant).

Division du droit d'auteur/Copyright Law Division:
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Senior Legal Counsellor); Boris KOKIN (juriste principal/Senior Legal Officer); Carole
CROELLA (Mlle) (conseillère/Counsellor); Geidy LUNG (Mlle) (juriste/Legal Officer);
Helga TABUCHI (Mlle) (juriste adjointe /Assistant Legal Officer); Stanislau SUDARIKAU
(consultant/Consultant).

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