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## STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

### Ninth Session

Geneva, June 23 to 27, 2003

#### REPORT

*adopted by the Committee*

1. The Standing Committee on Copyright and Related Rights (hereinafter referred to as the “Standing Committee” or “SCCR”) held its ninth session in Geneva from June 23 to 27, 2003.
2. The following Member States of WIPO and/or members of the Berne Union for the Protection of Literary and Artistic Works were represented in the meeting: Argentina, Australia, Austria, Bahrain, Belarus, Belgium, Brazil, Bulgaria, Burkina Faso, Canada, Chile, China, Colombia, Costa Rica, Côte d’Ivoire, Croatia, Cuba, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Egypt, Ecuador, El Salvador, Finland, France, Germany, Ghana, Greece, Guatemala, Haiti, Honduras, Hungary, India, Indonesia, Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Latvia, Libyan Arab Jamahiriya, Malta, Morocco, Mexico, New Zealand, Netherlands, Nigeria, Norway, Panama, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Senegal, Serbia and Montenegro, Slovakia, South Africa, Spain, Sudan, Sweden, Switzerland, Thailand, Tunisia, Turkey, Uganda, Ukraine, United Kingdom, United States of America, Uruguay, Venezuela and Zambia (76).
3. The European Community participated in the meeting in a member capacity.

4. The following intergovernmental organizations took part in the meeting in the capacity of observers: United Nations Educational, Scientific and Cultural Organization (UNESCO), World Meteorological Organization (WMO), World Trade Organization (WTO), League of Arab States (LAS), Arab League Educational, Cultural and Scientific Organization (ALECSO), Organization of the Islamic Conference (OIC) and Arab States Broadcasting Union (ASBU) (7).

5. The following non-governmental organizations took part in the meeting as observers: American Film Marketing Association (AFMA), *Associação Brasileira de Emisoras de Rádio e Televisão* (ABERT), *Associação Paulista de Propriedade Intelectual* (ASPI), Association of European Performers' Organisations (AEPO), Association of Commercial Television in Europe (ACT), International Literary and Artistic Association (ALAI), Asia-Pacific Broadcasting Union (ABU), Brazilian Intellectual Property Association (ABPI), International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), Canadian Cable Television Association (CCTA), Caribbean Broadcasting Union (CBU), Center for Performers' Rights Administration (CPRA), Central and Eastern European Copyright Alliance (CEECA), Civil Society Coalition (CSC), International Confederation of Societies of Authors and Composers (CISAC), Co-ordinating Council of Audiovisual Archives Associations (CCAAA), Digital Media Association (DiMA), Digital Video Broadcasting (DVB), European Broadcasting Union (EBU), European Bureau of Library, Information and Documentation Associations (EBLIDA), European Federation of Joint Management Societies of Producers for Private Audiovisual Copying (EUROCOPYA), Ibero-Latin-American Federation of Performers (FILAIIE), International Federation of Actors (FIA), International Federation of Library Associations and Institutions (IFLA), *Fédération internationale des associations de distributeurs de films* (FIAD), International Federation of Film Producers Associations (FIAPF), European Group Representing Organizations for the Collective Administration of Performers' Rights (ARTIS GEIE), International Confederation of Music Publishers (ICMP), International Federation of Journalists (IFJ), International Federation of the Phonographic Industry (IFPI), International Federation of Musicians (FIM), 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-Institute for Foreign and International Patent, Copyright and Competition Law (MPI), National Association of Broadcasters (NAB), National Association of Broadcasters (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), Software Information Center (SOFTIC), Union of National Radio and Television Organizations of Africa (URTNA) and Yahoo Inc. (44).

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 of the effective conduct of the Information Meeting on Webcasting by Mr. Ivan Bliznets, Deputy Director General, Russian Agency for Patents and Trademarks (ROSPATENT), 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. Upon the proposal of the Delegation of the Philippines and seconded by the Delegations of Mexico and Portugal, the Standing Committee unanimously elected Mr. Jukka Liedes (Finland) as Chairman, and Mrs. Rodica Pârnu (Romania) and Mrs. Ndèye Abibatou Youm Diabe Siby (Senegal) 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 the subject on broadcasting organizations. That being accepted by the Committee, the Agenda (document SCCR/9/1) was unanimously adopted.

9. At the request of the Chairman, the Secretariat gave a general overview of the documents for the current session of the Committee's meeting. Apart from the list of participants (SCCR/9/INF/1 Prov.1) and the Draft Agenda (SCCR/9/1), the documents were: SCCR/9/2 and 2 Corr. (proposal submitted by Kenya on the protection of non-original databases); SCCR/9/3 Rev. (proposal submitted by Kenya on the legal protection of broadcasting organizations); SCCR/9/4 Rev. (proposal submitted by the United States of America on the protection of the rights of broadcasting organizations); SCCR/9/5 (comparison of proposals of WIPO Member States and the European Community and its member States received by April 15, 2003, prepared by the Secretariat); SCCR/9/6 (survey on the implementation provisions of the WCT and the WPPT); SCCR/9/7 (study on the limitations and exceptions of copyright and related rights in the digital environment, commissioned by the Secretariat, from Professor Sam Ricketson of the University of Melbourne and Barrister, Victoria, Australia); SCCR/9/8 (proposal submitted by Egypt on protection of rights of broadcasting organizations); SCCR/9/9 (proposal submitted by Japan on issues concerning "webcaster" in new WIPO broadcasting organizations treaty); SCCR/9/10 (proposal submitted by Canada on the protection of the rights of broadcasting organizations).

## PROTECTION OF NON-ORIGINAL DATABASES

10. On the protection of non-original databases, the Chairman recalled that numerous studies had already been made available in past meetings of the Committee. The Chairman additionally noted that the item had been present on the Agenda of the Committee since 1997, primarily for stocktaking purposes.

11. The Delegation of Korea reported on recent amendments to the Korean Copyright Act, that would come into force on July 1, 2003, and that would provide protection of non-original databases by way of a chapter titled "Protection of Database Makers" as part of the legislation addressing related or neighboring rights. Under the revised Act, "database maker" was defined as the person who had personally or physically expended substantial investment for the making of the database or the renewal, verification or supplement of database materials. Database makers would be granted *sui generis* rights on the whole or substantial part of databases regardless of any requirement of originality, and would be granted exclusive rights of reproduction, distribution, broadcasting and transmission to the public. The rights of database makers would begin from the date of completion of the making of the database until five years from January 1 of the year following the date of completion.

12. The Delegation of India informed the Committee that in India original databases were protected under the Copyright Act, but that the protection of non-original databases remained a subject of debate. In that context, more time was required by delegations to discuss the substantive issue of whether any protection of non-original databases was needed, and whether any such protection should be granted under copyright or related rights since no creativity was involved.

13. The Delegation of Egypt noted that the said item had been on the Committee's Agenda for several years. In light of the fact that no real progress had been made, although substantial information and studies had been made available, the Delegation asked whether it was not preferable to remove the item from the Agenda until a later time when the Committee would be ready to engage in substantive discussions on the matter.

14. The Delegation of Senegal, supporting the statement of the Delegation of Egypt, noted that, although the issue of the *sui generis* protection of databases had been on the Committee's Agenda for more than four years, no real progress had been made or consensus reached on a legal response. While the protection of original databases was unproblematic, the protection of non-original databases was viewed as an issue of protection of investment, that could more appropriately be addressed by other laws, notably unfair competition laws. It asked whether that issue could not be better addressed in other fora, or it should be postponed to a more suitable time in the future.

15. The Delegation of Brazil shared the views expressed by the Delegations of India, Senegal and Egypt and questioned the need to maintain the item on the Agenda of the Committee. It had attempted to reach understanding on that subject and to that effect had undertaken consultations with the private sector of its country, which did not display an interest in the issue. There was little agreement at the international level on what kind of protection had to be granted. That showed that the topic was not mature for discussions at the international level, and accordingly the Delegation supported the suggestion to remove the item from the Agenda until a suitable time in the future.

16. The Delegation of the United States of America stated that, while it understood the sentiments of several delegations with respect to the little progress achieved, it continued to attach importance to the subject, and noted that the U.S. Congress was devoting attention to the issue during its current session in order to arrive at suitable legislative solutions to the protection of such databases.

17. The Delegation of the European Community recalled that the item had been on the Agenda for some time and that it was even included in the Basic Proposal for the 1996 Diplomatic Conference. The European Community and its member States were in a special position since specific legislation to protect non-original databases had been adopted under the 1996 Database Directive. The issue was of particular economic relevance, and the European economy had benefited from that protection. Member States had all implemented the Directive and their experience was positive. The Delegation referred to its submission made on November 4, 2002 (document SCCR/8/8). The European Community granted national treatment for *sui generis* databases on the basis of reciprocity. The first decision to extend national treatment had been taken last year, and the Delegation was confident that other countries would benefit from that protection. The European Commission had commissioned a study on the protection of databases, the results of which had recently been received. They would form the basis of a Commission report that would be adopted by the end of the current year. The Delegation offered to explain details of the report and to share its

experience with other delegations. It did not share the views expressed in favor of removing the item from the Agenda.

18. The Delegation of the Russian Federation shared the views expressed by the delegations of the United States of America and of the European Community. The item should be kept on the Agenda of the spring session in 2004.

19. The Delegation of Romania was of the opinion that databases constituted an essential component of science, research and education. The production of databases should be stimulated through effective protection. The Romanian legislation granted protection for non-original databases on the basis of the EU Directive. The Delegation supported the views expressed by the Delegations of the United States of America and of the European Community.

20. The Delegation of India stated that no consensus had emerged on the protection of non-original databases and for that reason the item should be removed for the time being from the Agenda.

21. The Delegation of Egypt recognized that some delegations attached high importance to the protection of non-original databases. If consensus was to be reached on that matter, more reflection would be needed and the item could be postponed to a more suitable time in the future.

22. The Chairman concluded that the item need not be kept on the Agenda of every session of the SCCR but that some mechanisms would have to be established to ensure appropriate monitoring of developments.

## PROTECTION OF BROADCASTING ORGANIZATIONS

23. The Chairman invited the five delegations that had submitted new proposals to present their proposals or comment on them.

24. The Delegation of Egypt drew the attention of the Committee to the fact that a technical mistake had taken place in the transmission of its proposal. The Delegation proposed to rectify that mistake and make available the following day a new, complete document. The main elements contained in the proposal were, first, to exclude the protection of webcasting, due to the premature stage of discussions on that issue, and, second, the need to include implementation measures to ensure the effectiveness of obligations.

25. The Delegation of the United States of America indicated that the revised version of its proposal (SCCR/9/4 Rev.) for a WIPO Treaty on the Protection of Broadcasting, Cablecasting and Webcasting Organizations was the result of a joint effort of the United States Patent and Trademark Office, the United States Copyright Office and the interested stakeholders, namely, representatives of performers, content owners, broadcasters, cablecasters and webcasters. The revised version attempted to respond to questions raised during the previous session of the Committee while maintaining a balance among the interests of creators, performers and disseminators of creative content and taking account of certain broader policy interests. The Delegation favored a treaty that would be reasonably up to date given the state of technology now and in the foreseeable future. In that respect, there had been vigorous discussions about the possibility of implementing a so-called "broadcast flag" to limit the

ability of consumer electronics devices to record and retransmit over-the-air programming. The need to have a treaty provision on that technology should accordingly be considered. The Delegation indicated that to adopt a treaty focusing on traditional broadcasting alone would be an incomplete solution. The new treaty, the first to be created in the 21<sup>st</sup> century, should cover the concerns of 21<sup>st</sup> century developments and interests. Hence appropriate protections for cablecasters and webcasters should be a part of any new treaty, as the value added by the deliverer of content could be appropriated by pirates, irrespective of the means of delivery. However as differences among technologies could emerge in the future, requiring adaptations to the rights granted to different sets of rightholders, each of those appeared separately in the proposal. The Delegation noted that its proposal included a strong set of rights to enable the beneficiaries of the treaty to effectively combat unauthorized use of their signals. To complement the exclusive rights granted to broadcasting organizations in the Rome Convention and the Agreement Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), the proposal provided for rights of computer network retransmission, cable retransmission and deferred transmission by wire or wireless means. Moreover the proposal granted the following rights to prohibit: making available to the public on demand, reproduction and distribution and importation of reproductions. It also included the protection of pre-broadcast signals, obligations concerning technological protection measures and rights management information, and a new enforcement obligation with respect to the rights and prohibitions covered by the treaty. The rights granted to beneficiaries under its proposal were bifurcated: full exclusive rights along the lines established in the Rome Convention were included but in an updated form to reflect existing technology and practices, while a more limited “right to prohibit” was intended to protect against certain activities related to signal piracy while responding to the concerns of the content community. That was in line with what the Rome Convention and the TRIPS Agreement did in combination, for those countries that did not fulfill their obligations under Article 14.3 of TRIPS by granting rights to content owners. Finally all of the rights to prohibit had been limited to include activities related only to unauthorized fixations. A provision limiting membership in the new treaty to those countries that were party to the 1996 WIPO “Internet” treaties was included in order to maintain the balance among various stakeholders.

26. The Delegation of Japan pointed out that its proposal (document SCCR/9/9) analyzed critical issues relating to the possible inclusion of webcasting in the new international instrument. It highlighted that, whereas updating the scope and level of protection of broadcasting organizations’ rights was an urgent matter, the protection of webcasting activities was a newly emerging issue meriting more thorough consideration. In its view, the best approach would be to allow the conclusion of a new treaty in an expeditious manner, while launching separate new discussions on webcasting. The Japanese proposal focused on six questions related to the inclusion of webcasting in the new treaty. First, the differences between traditional broadcasting and webcasting in respect of their operation as a means of information and their technical and physical characteristics; second, the definition and concept of webcasting; third, the impact on other neighboring rightholders, and in particular producers and performers; fourth, the fact that every individual could be involved in webcasting activities; fifth, inasmuch as it was a point-to-point communication, webcasting could not be considered as transmission to the public under the Rome Convention, indeed, expanding the concept of broadcasting to cover webcasting would change one of the most fundamental concepts of neighboring rights since adoption of the Rome Convention; and sixth, the Japanese proposal analyzed the difficult question of enforcement involved in the protection of webcasting, given its transnational character.

27. The Delegation of Canada, referring to its new proposal (document SCCR/9/10), indicated that the new treaty should not necessarily cover the retransmission of wireless signals. Its proposal was based on the assumption that the new treaty might include an exclusive right of retransmission of wireless signals, in which case a carve-out or reservation would be needed. The proposal aimed at addressing the concerns of content owners as regards a future right of broadcasters for the retransmission of wireless signals, especially in cases in which those signals contained material protected by copyright or related rights.

28. The Delegation of Senegal noted that the rights of broadcasting organizations was a difficult issue, on which there was little consensus. As broadcasters were also users of content, there was a definite need to protect the signals while separating such protection from affecting the content carried. When digital elements were added to the mix, it became even more complex, and that would make it very hard to create a balanced treaty. The Delegation urged the Committee to take sufficient time to clarify concerns and definitions first, and then move on to the various rights to be provided. It noted that its country had made no formal proposal, as it was carefully following the developments and progress of events.

29. The Delegation of India informed the Committee that there had been wide ranging discussions in its country with particular emphasis on webcasters and cablecasters, and that, as a result, its view was that it was premature to move towards a treaty. Broadcasting organizations were, for the most part, already protected in its country. A good deal of attention was being paid to the interests of broadcasting organizations, webcasters, cablecasters and content providers. The interests of the general public and consumers were not sufficiently taken into account. No new treaty could give more protection to broadcasting organizations, webcasters and cablecasters than what was given to authors and performers. If it was the investment of webcasters that should be protected in the new treaty, the Delegation urged that such an interest was not the proper subject of copyright and related rights, as no creative intellectual effort was involved. New rights for webcasters and cablecasters would create another layer between the users and the creators or content providers. The fifty-year term of protection included in several proposals would be totally against the interests of the public. Thus, the question of whether a new treaty was necessary should be carefully considered.

30. The Delegation of the Russian Federation observed that, while significant progress had been made in the Committee on the issue of webcasting, there was still much confusion, such as with respect to the scope of the new treaty and the rights to be granted. The Committee must reach an agreement as to whether or not to include webcasters in the new treaty, or possibly, and preferably, negotiate a later separate treaty on webcasters, since the Committee had almost concluded all issues on a treaty just covering broadcasters.

31. The Delegation of Egypt supported the intervention of the Delegation of Senegal and parts of that of the Delegation of India, and noted that many different opinions had been expressed already on essential matters, such as definitions, scope of protection and rights. The Committee should clarify all these matters, especially that of the scope of the new treaty.

32. The Delegation of Ghana proposed that the regional groups be given an opportunity to further discuss amongst themselves the various matters before the SCCR.

33. The Chairman reviewed the results of the Committee's work in the past sessions. He was of the opinion that much progress and agreements had been reached on a number of points and that the Committee might best proceed by addressing the issues on which there

remained a lack of consensus. He referred to the document prepared by the Secretariat for the May 2002 session of the SCCR (document SCCR/7/8) as a good source of background information regarding concepts and definitions of terms. He next referred to document CRP/SCCR/9/1 dated June 23, 2003, and reviewed the various issues which were identified in it. The question on whether Internet streaming should be protected was open, but on other related issues, such as fixation, reproduction, distribution of fixations of broadcasts, a strong agreement had been reached. Many delegations had also supported other proposals such as: rights to simultaneous and deferred re-broadcasting; rights provided in the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) such as the rights of making available on demand and communication to the public; technological measures of protection and rights management information. Regarding all of the foregoing, there had been substantial convergence. However, there were issues with little convergence, such as whether Internet-originated streaming should be protected, and regarding rights such as decryption and decoding, and the making available of unfixed broadcasts. The issue of broadcasters' rights, he observed, had been on the Committee's Agenda since 1998, and it had been reviewed eight times by the Committee, with many proposals submitted. Clear understandings had evolved over that period of time, and he was confident that progress could be made at the present meeting. Towards that objective, he proposed that the Committee proceed with some clusters of issues, namely: (i) the scope of protection, including the object of protection; (ii) the rights to be granted; (iii) national treatment; and (iv) relation to other treaties. Thereafter, the Committee could assess its progress, and take appropriate decisions as to other issues and further meetings.

34. The Delegation of Egypt stated on behalf of the African Group that the scope of protection under the discussed new international instrument should cover only signals and broadcasting transmissions as opposed to content. A number of issues, including technical aspects, needed to be addressed as a priority in the new legal instrument on protecting the signals of broadcasting organizations. Webcasting represented an important issue that required a special study of the technical and legal problems involved. For that reason the Committee needed to focus on traditional broadcasting organizations and the Group recommended that the means of protecting webcasting be addressed in the future. A decision on that issue would help the Committee move forward in the discussions.

35. The Delegation of Indonesia, speaking on behalf of the Asian Group, endorsed the statement of India made earlier. It also supported the position expressed by a majority of delegations that the protection of broadcasting organizations needed to be reviewed because of rapid technological developments. However, the group believed that it was premature to include the issues of webcasting and cablecasting in the discussion, as they needed more time and attention but also in view of the existing technological gap between developing and developed countries. The rights granted to broadcasters was a related right, and the group therefore was of the view that the protection should not exceed in duration the rights provided to content owners, but thus should last only 20 years.

36. The Delegation of Brazil, speaking on behalf of the Group of Latin American and Caribbean countries (GRULAC), informed the SCCR that the Group had carefully reviewed document CRP/SCCR/9/1 prepared by the Chairman. While the general feeling was that the means of protection of the rights of webcasters deserved to be studied, GRULAC did not share the view that the issue needed to be included in the scope of the new treaty. The great legal and technical complexity of the protection of webcasters required further clarification and study and the group was concerned that the introduction of the issue in the discussions on a new treaty on broadcasting could create difficulties.



37. The Chairman proposed that the deliberations of the Committee focus on the scope (that is, the objects of protection) of the new instrument as a first package, the second package being the rights that needed to be accorded. Following a round of discussions on these packages, the Committee could consider the issues of national treatment, beneficiaries and relation to other treaties. The Chairman referred to document CRP/SCCR/9/1 Rev., the revision of which was based on the debate referred to in paragraphs 70 to 81 of the report of the eighth session of the Standing Committee. Concerning the object of protection it had become clear that traditional broadcasts of program-carrying signals were definitely to be addressed within the scope of the new instrument. As to how pre-broadcast signals should be treated, some delegations favored the inclusion of specific rights in the new treaty, while others had formulated them differently, for example by requiring "adequate legal protection," but it seemed that the protection of such signals was acceptable to many delegations. With regard to cable-originated signals, a vast majority of delegations agreed also to include those. While there was less need to discuss ordinary or traditional broadcasts, more clarity was needed as to what was meant by cable-originated signals which were included by some delegations in the notion of broadcasts and which were ready to grant them the same protection as traditional broadcasts. More analysis and discussion was also needed on items such as streaming and webcasting.

38. The Delegation of the European Community presented its working paper distributed earlier (document SCCR/9/12), which related to the object of protection. A crucial question in the debate was the kind of activities that were to be protected in addition to traditional wireless broadcasting in the new instrument. It was evident that the Rome Convention needed to be updated, but there seemed to be no common response with regard to how far that updating should go, and in particular as to which extent the instrument should cover certain Internet transmissions or webcasting. It shared the concerns of other delegations, notably the Delegation of Japan, that it would not be appropriate to grant protection to a large and unidentified number of webcasters on an equal footing with the recognized broadcasters. However, it did not favor the exclusion of all transmissions based on new technology from the scope of the new instrument. The technical means of transmission by wire or wireless means were not relevant for determining the nature of a transmission as broadcasting or non-broadcasting. It was equally clear that not every transmission to the public should qualify as broadcasting within the meaning of the new instrument. In its earlier proposal contained in document SCCR/6/2, the Delegation had indicated clearly that interactive activities, particularly the acts of making available of fixations of broadcasts, should not qualify as broadcasts and did not merit protection under the new instrument. It should further be clarified that transmissions that originated in, or were transmitted on, computer networks did not qualify as broadcasting. A similar clarification could be found in the proposal presented by the Delegation of Egypt. On the other hand, if a traditional broadcast was transmitted simultaneously and unchanged in the computer networks, there was no reason to refuse protection to such parallel broadcasts in the new instrument. The Delegation further explained that its new proposal reiterated the point that the new instrument should cover all transmissions by wire or over the air, including by cable or satellite for reception by the public. However, it felt that some transmissions were not to be covered by the new instrument. To that end, the proposal of the European Community and its member States had identified two cases of exceptions. The first was mere retransmission by cable of broadcasts of broadcasting organizations, and the second was the making available of fixations of broadcasts, as set out in Article 7 of the Delegation's proposal (document SCCR/6/2) relating to interactive activities which were not to qualify as broadcasts under the new instrument. In addition, transmissions in computer networks, whether or not originating there, should not qualify as broadcasting. However, simultaneous and unchanged retransmissions of broadcasts

on computer networks should enjoy the treatment given to broadcasting. In a footnote attached to Article 1*bis* in document SCCR/9/12, an addition was contained reflecting the flexibility of the Delegation with regard to the definitions needed. It did not exclude that, in the course of the discussions, some other categories of transmission should be excluded from protection.

39. Without taking any position on the substance of the European proposal, the Delegation of Canada questioned whether the word “retransmission” was technically correct since it suggested a transmission based on the original broadcast signal and might not include a parallel transmission.

40. The Delegation of Japan noted that the proposal of the European Community seemed to take care of the issue of the protection of webcasters in the new international treaty. However the Delegation expressed its concern that the proposed definition provided protection to program-carrying signals regardless of the means of transmission. That could lead to the protection of the broadcast content rather than the signal and fundamentally question the concept of the related rights provided to broadcasting organizations. Its government would analyze that idea in further detail. With regard to pre-broadcast signals, the Delegation wondered whether that problem had to be taken care of under the copyright system as it could be handled under other broadcast-related legal regulations.

41. The Delegation of Jordan, on behalf of the Arab Group, expressed its view that, when considering documents of complex technical and legal nature, it was imperative to have them issued also in Arabic language, so that the Delegation could follow the discussions appropriately.

42. The Delegation of the United States of America reiterated its point that, as the discussed treaty was to be the first new treaty of the 21<sup>st</sup> century, it was to respond to 21<sup>st</sup> century issues. Webcasting was certainly one of them. The presentations on the issue during the preceding Information Meeting had revealed the scope, complexity and level of investment in bringing information to the public over computer networks. The Delegation believed that its treaty proposal dealt effectively with those issues by providing protection for conventional broadcasters, cablecasters and webcasters. The revised proposal attempted to respond to some of the comments that had been made at the previous session of the Standing Committee. The revised definitions did limit the scope of the webcasters that would be covered. Individuals making transmissions from their own computers were eliminated from the definition by defining a webcasting organization as a legal entity. The definition was focused on the streaming of signals over the Internet by organizations that had the same sort of activities as broadcasting organizations. Not addressing the issue of webcasters in the treaty would mean ignoring technological progress. Webcasting needed to be addressed as comprehensively as possible. The Delegation asked the Delegation of the European Community, regarding the term “simultaneous and unchanged” used in the latter’s latest proposal, what the term “unchanged” meant. The nature of Internet streaming required technological changes to the signal in dividing the information into packages and encoding them in order to make them available for Internet transmission. Furthermore, advertising or formatting might be adjusted for different markets. Another question related to how practical the proposed separation would be, as real time streaming and Internet-originated transmissions within the activities of one organization would be difficult to separate and could introduce unnecessary complexity. The Delegation acknowledged that including webcasting in the scope of the treaty would make the negotiations somewhat more complex, but it would not be impossible and it would respond alike to the needs of broadcasters, cablecasters and

webcasters to protect their considerable investment, which was the sole justification for protection under the Rome Convention.

43. In response to the questions raised by the Delegation of Japan, the Delegation of the European Community clarified that only one new element had been introduced in its latest proposal containing a modified definition related to transmissions on computer networks. Transmissions by wire had always been covered in the Delegation's treaty language proposal and the texts presented by it had always been technology neutral. With regard to the questions asked by the Delegation of the United States of America, the Delegation felt that there was no obligation to protect all sorts of activities undertaken by broadcasters. If a broadcaster engaged in other activities than broadcasting, one would need to consider them and establish whether they also needed to be covered under the new instrument. The European Community believed that webcasting should not be covered in the new instrument. That seemed to concur with the positions expressed by other delegations. With regard to the terms "simultaneous and unchanged," the Delegation stated that, when a broadcaster altered its own traditional broadcasting or changed its composition, that would not be an unchanged or simultaneous transmission. Article 2(c) of the proposal of the United States of America contained the notion of "same sounds" or "transmission substantially at the same time" which did not appear any clearer than "simultaneous and unchanged retransmission." Unnecessary complexities in terminology were to be avoided. Transmissions on computer networks were expressed in different language in different proposals. The Chairman's document CRP/SCCR/9/1 Rev. used the term Internet-originated streaming, while the European Community thought one should refer to webcasting by a term that also included all Internet transmissions that did not necessarily originate in computer networks. The Delegation was, however, open to further suggestions.

44. The Delegation of Australia requested clarification from the Delegation of the European Community concerning the submission of the latter entitled "Article 1*bis* – Definitions." Referring, in the last sentence of the definition proposed in the document, to "the simultaneous and unchanged retransmission on computer networks of its broadcast by a broadcasting organization" being "granted the protection as if it were broadcasting," the Delegation suggested that the language was creating a right, rather than just defining the term "broadcasting," and it wondered why that had been deemed necessary.

45. The Delegation of the European Community, in response to the request from the Delegation of Australia, stated that it had attempted to exclude from protection under the new treaty transmissions on computer networks, except for simultaneous and unchanged transmissions of broadcasts on computer networks. In the Delegation's view, the wording mentioned by the Delegation of Australia was clearly referring to the definition.

46. The Delegation of Canada questioned whether the word "retransmission" in the European proposal was technically correct, and suggested that a simulcast should rather be referred to as a parallel transmission.

47. The Delegation of the European Community responded that the term retransmission had been chosen in accordance with the terminology used in Article 6 of its own treaty language proposal and in the Rome Convention to distinguish between two simultaneous transmissions, namely the original transmission, outside the Internet, and at the same time, a parallel or rather re-transmission of that on the Internet.

48. The Delegation of India noted that the term broadcasting was being redefined compared to what was in the Rome Convention. The Committee must be careful, since the intent was to protect the signal, not the content, and signals do not require copyright protection, as little as cable transmissions do. Computer networks were not part of that definition, and the Committee should take itself sufficient time to examine that issue in depth.

49. The Delegation of Jamaica referred to the submission made by the European Community and its member States regarding Article 1*bis* on the definition of broadcasting. The Delegation explained that the definition of broadcasting, as proposed, could be construed as excluding images on their own, and it was unclear whether this was the desired intention. In order to include images on their own, the second line of that definition needed to be reworded, namely the phrase which read “public reception of sounds or of images and sounds or the representations thereof,” should be replaced by “public reception of sounds or images, or images and sounds or the representation thereof.”

50. The Delegation of the European Community responded that the above definition had been formulated on the basis of the definition of broadcasting in Article 2(f) of the WPPT, but it agreed that the Delegation of Jamaica had made a valid point.

51. The Chairman recalled that the basic analysis of the matters discussed had already taken place during the past eight sessions of the SCCR. At the present moment, the Committee should be mainly focused on the analysis of the new proposals received from different Member States. Thus, he proposed to discuss the packages of rights, or restricted acts or obligations, listed in document CRP/SCCR/9/1 Rev., namely: (1) fixation, (2) reproduction of fixations, (3) distribution of fixations, (4) rebroadcasting (simultaneous), (5) cable retransmission (simultaneous), (6) retransmission over the Internet (simultaneous), (7) deferred broadcasting/cable/Internet transmission based on fixation, (8) making available of fixed broadcasts, (9) communication to the public (in places accessible to the public against entrance fee), (10) obligations regarding technological measures of protection and rights management information. And also, other suggested items, namely: (11) decryption of encrypted broadcasts, (12) rental of fixations and (13) making available of unfixed broadcasts. Items (10) and (11) could be considered obligations and not necessarily exclusive rights.

52. The Delegation of India stated that the rights listed in the above-mentioned document could not be considered points of convergence in the current discussions. There were some aspects that needed further clarification before tackling the list of rights, such as the separation of the content and the signal in connection with the notion of fixation.

53. The Chairman recalled the *acquis* achieved in the Rome Convention, that many of the rights listed in document CRP/SCCR/9/1 Rev. were already in that Convention and therefore part of the existing international protection.

54. The Delegation of the United States of America shared the concern expressed by the Delegation of India, particularly regarding the differentiation between signal and content when granting rights to broadcasters. Thus, its proposal granted rights at two levels: (i) rights to authorize or prohibit; and (ii) more limited rights to prevent or to prohibit. Among the latter rights, it referred to the right to prohibit the making available to the public of unauthorized fixations, the reproduction of unauthorized fixations and the distribution to the public and importation of reproduction of unauthorized fixations. The idea of establishing rights “to prohibit” had been taken from Article 14.3 of the TRIPS Agreement. Unlike

general exclusive rights, those rights could not be exploited or licensed. They only granted the ability to prevent certain activities.

55. The Chairman informed the Committee that in his country, Finland, the national legislation granted at least the listed rights from (1) to (7) and (9) in an unconditional way to broadcasters. So far, there had not been any complaint about problems or incompatibility between those rights in the signal and the rights granted to owners of the content.

56. The Delegation of the European Community stated that, once agreement was reached on the object of protection, one should be able to agree on granting meaningful rights. Regarding such rights, the basis of the current discussion was the rights granted by the Rome Convention, namely: (a) rebroadcasting, (b) fixation, (c) reproduction of fixations, and (d) communication to the public. At domestic level, the European Community had adopted some time ago certain laws that granted those rights to broadcasters, but this under no circumstances to the detriment of the rights of other rightholders. The rights listed from (1) to (10) were very useful, but rights “to prevent or to prohibit” were not strictly speaking intellectual property rights. They did grant a form of protection but they did not permit any exploitation or licensing. The rights under discussion could not possibly create confusion between the protection of the content and the signal.

57. The Delegation of the Russian Federation stated that the rights under discussion did not cause it any problem. Its national legislation granted the basic rights provided for in the Rome Convention. Rights of fixation and retransmission, and even the protection of technological measures, perhaps merged with the decryption of broadcasts, were essential to guarantee a true protection of the signals. For instance, transmissions of broadcasts in the different time zones of its country were based on fixations. In sum, it believed that it would be useful to retain the whole list of rights.

58. The Delegation of Brazil shared the concern of the Delegation of India regarding the clarification of the scope of the right of fixation. In addition, it expressed its concern over obligations regarding technological measures of protection used by broadcasters, and particularly with respect to their interface with the limitations and exceptions to copyright and their potential impact on the exercise of such limitations and exceptions. That discussion was already taking place during the implementation process in countries of the WCT and the WPPT. It would be useful to hear about experiences of other countries in that respect.

59. The Delegation of Australia reserved its position on the protection proposed in any treaty. It noted that its national law provided rights to broadcasters in respect of the matters covered by rights (1) to (8) and (10) in document CRP/SCCR/9/2. As regards right (9), it noted that it was the subject of an optional right in Article 13 of the Rome Convention, being subject to the possibility of a reservation as permitted by that Convention. With regard to the concerns that had been expressed that only the signal and not the content of signals should benefit from protection under the proposed treaty, it noted that the content of signals was what viewers of and listeners to broadcasts were interested in, and was therefore the reason for making the investment in and carrying out the broadcast transmission. Further, it did not understand the concern expressed that the exercise by broadcasters of rights that they might have under the treaty might prejudice the exercise of rights in the content of the broadcasts. It was the broadcast that delivered the content to viewers and listeners who might not otherwise be aware of or have access to the content. The broadcast had added to the number of consumers of the content carried by the broadcast. Finally, it did not understand the process of making available an unfixed broadcast that was the subject of right number (13) in

document CRP/SCCR/9/1/ Rev., and it asked for an explanation from the delegation which had proposed it.

60. The Chair opened the floor to non-governmental organizations to address issues relating to the object of protection and rights of broadcasters and webcasters proposed to be protected under the new instrument.

61. The representative of the National Association of Commercial Broadcasters in Japan (NAB Japan) addressed the differences between broadcasting and webcasting. Broadcasting had already been established as a principal communication medium worldwide, was significantly regulated by domestic legal systems, and had played an important role for a considerable period of time. Broadcasters had sufficient capacity to gather and disseminate a large amount and wide variety of information, but also were able to produce high quality programs. Although professional webcasters did exist, no regulations were yet imposed on them and to date they played no formal public role in making information available. Further, the liability of webcasters had not been established worldwide. As a result, numerous websites had been discovered that infringed others' rights and provided inaccurate information and harmful content. In addition, the situation of webcasting was quite volatile both socially and technologically, as the method of transmission was changing rapidly. In addition, only about one fifth of the world's population enjoyed access to the Internet. As a result, it was difficult to define "webcasting," "webcast," "webcaster" and the scope of protection of webcasting. The NAB Japan did not oppose protection of webcasting, but the differences between broadcasting and webcasting, both social and technological, needed to be squarely addressed. As noted by the Delegation of Japan, many issues needed to be resolved before webcasting could be included as an object of protection in the new treaty. It was not realistic or meaningful to protect webcasting and traditional broadcasting under one treaty. Separate treaties were preferable for the different media, one being traditional broadcasting, whether including cablecasting or not, and the other being streaming via the Internet. Protection of broadcasters was best achieved through the right of making available of unfixed broadcasts, in preference to other approaches, such as the right of retransmission of broadcasts over the Internet. If the retransmission of a broadcast via the Internet were covered by a retransmission right, it would first have to be verified that the transmission had taken place over the Internet, although that verification was almost impossible in practice. Alternatively, if the right of making available covered the retransmission of broadcasts via the Internet, then no such verification would be required, and all that would have been required was a finding of an unlawful retransmission of a broadcast. Consequently, the NAB Japan favored the establishment of the making available right in the new treaty.

62. 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), expressed the view that the scope of the new international instrument should be as narrow as possible and that to include cablecasters, and webcasters in particular, would set the boundaries too wide. It was proposed that the protection of webcasters against piracy of their signals should be taken up as a separate issue. It was clear that there were various concepts of webcasting, and it was difficult to define webcasting precisely. Examples had been given of webcasting that comprised thousands of musical works and films that could be "down-streamed," involving significant investment by important commercial enterprises. However, the software for the streaming server was available to anyone who wished to establish a broadcasting service, at low or no cost. As a result, webcasting had the potential to become a mass application of a specific technology. In a certain territory or region, it was stated that that application could

have been employed by large numbers of information providers. In the process of enforcing rights on the Internet, it was common to encounter individuals or organizations operating webcasting business models that made use of copyright protected materials without proper authorization, appearing and disappearing in short periods of time. However, some of the definitions that were being considered for the new international instrument sought to protect exactly those webcasters. A wider definition of webcasting increased the risk that operations of illegal “hit-and-run” information providers would be legitimized by that instrument. It was unclear, while webcasting was still in a development stage, how webcasting should be treated in an international instrument, and who should benefit from the protection. It was advisable to concentrate on protection of broadcasting in its true meaning and scope, and to leave all “broadcasting-like” technologies and manners of distribution for later consideration. At that later time, copyright and related rights instruments should be used to solve the problems and issues faced by broadcasters in an appropriate way. While some issues qualified for copyright protection, others, such as pre-broadcast signal protection, were of a technical nature that could be more appropriately dealt with in other regulatory frameworks, such as telecommunications laws and regulations. Copyright was important because it related directly to the creative process, and to grant copyright or related rights to broadcasters when that was neither necessary nor the best option could needlessly weaken the notion of copyright itself.

63. The representative of the International Music Managers Forum (IMMF) spoke on behalf of the worldwide community of music managers appointed by artists and creators of musical works to act as their exclusive representatives in all aspects of their professional careers. In many countries, the IMMF had a fiduciary obligation in its discharge of responsibilities to its artist-clients. The representative proposed treaty language in favor of the inclusion of webcasting in the instrument under discussion. From the artists’ point of view, it was difficult for new or lesser-known artists to gain access to the airwaves through traditional broadcasters, whereas the reverse was true for Internet radio and other forms of webcasting, which actively promoted new artists and music. The diversity of Internet radio stations and relatively low startup costs meant that the aggregated variety of types of music and artists which the medium required virtually guaranteed that the medium would continue to allow new music to reach the public via the Internet in a manner that traditional broadcasting would not. That was important for the availability of musical choice for the consumer, and for the ability of artists to reach the consumer more directly, irrespective of where the artist was physically located. An African artist without a worldwide phonogram record contract, for example, could record a song and gain access to a web browser and submit the song to Internet radio outlets worldwide, which exposure could help the artist gain a contract with a phonogram producer who may otherwise never have known the artist existed. Webcasting was the only viable method by which new music could reach a global audience, which fact alone meant that those technologies served an essential public interest. New-technology-based broadcasting was rapidly expanding worldwide, and its growth was accelerating. The medium was inherently global. The IMMF representative noted that, if an instrument on broadcasting that included provisions on webcasting were brought to signature in 2004, and then took five years to enter into force, it would not be until 2009 before there was wide adoption of the terms of the instrument. By 2009, without international norms, it was stated that, due in part to widely differing national legal provisions for webcasting and uneven provisions for the prevention of piracy of such activities, the degree of piracy would gravely impact the economic circumstances of all rightsholders. It was thus essential to create international norms in the new treaty so that the essential processes of preventing piracy could be adapted to existing circumstances, and so that rights management and licensing infrastructures could be improved to complement the legal norms under discussion. The IMMF proposal made use of existing definitions of rights in order to define the various activities of webcasters, and to cover all the

uses discussed by the meeting. The use of existing rights and definitions was considered essential in order to provide a legal framework for webcasting activities that would allow webcasters to deliver rightsholders' works in a way that rightsholders could authorize. The creation of new definitions was not considered necessary and, it was stated, could lead to an imbalance between stakeholders. It was proposed that the new instrument should contain provisions for webcasting, even while acknowledging that levels of economic activity with respect to these technologies varied widely among Member States. States should be free to sign an instrument that contained those provisions, but to retain the right to reserve on them until such time as they believed it was appropriate to implement them in their particular circumstances. Treaty language was proposed to that effect. New forms of broadcasting did present challenges to work on the new instrument, but it was suggested that those challenges could and should be overcome. The danger of waiting to provide international norms in respect of webcasting was so great that not to establish them could result in a dramatic increase in piracy. Conversely, the development of norms would act to prevent piracy, create incentives for legal development of webcasting, increase consumer choice with respect to cultural products, and provide a more level playing field for artists to reach the public. The comments of other delegations and NGOs were invited on the IMMF proposals.

64. The representative of the Co-ordinating Council of Audiovisual Archives Association (CCAAA) stated that it represented the interests of professional archivists working with audiovisual materials including films, broadcast television and radio, and audio recordings of all kinds. The primary business of its members was ensuring the preservation and survival of time-based sound and moving image documents for access and use by present and future generations of citizens. While working predominantly in the public sector, CCAAA members reflected a broad range of interests across the broadcast media, arts, heritage, and information sectors. The professional archivists they represented worked in institutions such as archives, libraries and museums at national and local levels, university teaching and research departments, and broadcasting organizations. The CCAAA representative noted in particular the "Preliminary Understanding" contained in the Chairman's document CRP/SCCR/9/1 Rev. tabled earlier in the meeting. With respect to the reproduction of fixations, it stated that, whatever the eventual scope of the new instrument, the new statutory framework should take full account of the necessity, with respect to audiovisual documents, for copying or cloning as an essential preservation strategy. It was noted that many audiovisual archival repositories did not operate within broadcasting organizations. Archives in the public sector had a general remit for cultural heritage, national or local, and radio and television programming was part of that heritage. Those institutions, which operated for the public good, needed a specific archival exemption for copying for the purposes of archival preservation and collection management.

65. The representative of the *Association Littéraire et Artistique Internationale* (ALAI) noted the proposal by the Delegation of the United States of America to include webcasters in the new treaty instrument. The African Group, the Asian Group, GRULAC, and the European Community had all stated that they could not accept the proposal, and sought more information on the consequences of that fundamental extension of the scope of the new instrument. The Delegation of Japan had also submitted a paper on the subject that was against the proposed extension of protection to webcasters, at least at the present time. There was a common desire to learn more about the implications and consequences of such an extension of the scope of the treaty, reflecting the lack of clarity on the issue. The representative stated that the problem would be solved if the Delegation of the United States of America would agree to remove the protection of webcasters from its proposal on the new instrument, and to rework the provisions into a proposal for a future protocol on webcasters.



That issue would then be one of the first items of the future Agenda of the Committee. Finally, a point alluded to by the Delegation of Australia was the question whether the condition of entrance fee should be maintained in item 9 of the listing of rights contained in the Chairman's document CRP/SCCR/9/1 Rev. That condition from the Rome Convention was outdated. ALAI proposed to delete the entire condition, or to replace the non-existent "entrance fee" by the words "with gainful intent."

66. The representative of the International Federation of Phonographic Industries (IFPI) proposed that the protection of the rights of webcasters should be addressed separately, and supported the proposal of the Delegation of Japan in that respect. It was important that webcasting be properly defined to avoid blurring the line between broadcasting and streaming. Attempts to extend the concept of broadcasting to cover certain terms of Internet transmission, however limited, could create confusion about the interpretation of existing international conventions and could result, without justification, in the wider application of exceptions and compulsory licenses from which broadcasters benefit in numerous territories, to the detriment of authors, performers and producers. The main objective of those engaging in webcasting at the present meeting was not the fight against piracy, but rather to be assimilated in their activities to broadcasting in order to have access to content based on compulsory licenses for minimum payment. It was considered essential to maintain a clear definition of broadcasting as it stemmed from the WPPT, and by explicit exclusion of Internet transmissions, to avoid detriment to other rightsholders. Reference was made to the list of rights that had been presented for possible inclusion in the new treaty, which included rights that were not all within the scope of the Rome Convention. Further discussion was required with respect to many of the rights listed as to whether they should be included, regarding their scope, and any conditions that might apply. In particular, further consideration was required with respect to the right to control simultaneous and deferred retransmissions over the Internet. It was noted that one source of possible confusion could have been the notion that it was feasible and justified, in drafting the list of rights, to draw on the rights provided in the WCT and the WPPT. Further modifications were required to match the rights of broadcasting organizations to the purpose and aim of the Committee's exercise, which was to give broadcasting organizations the means required for the fight against signal piracy. The IFPI representative supported the approach taken in the revised proposal of the Delegation of the United States of America. With respect to rights covering use made of a fixation, the right should be limited to the use made from an infringing copy or fixation, which would enable broadcasters to fight piracy, while avoiding the building of business models by broadcasters to the detriment of other rightsholders, who themselves often did not enjoy the rights required to exercise control. Further, other rights would need to be carefully considered, including the right of simultaneous retransmission and the effect that the establishment of such a right at an international level would have on national economies, bearing in mind that authors, performers and phonogram producers in numerous countries were subject to compulsory licensing, or in some countries did not enjoy any rights in that respect. Finally, a careful approach was required with respect to the proposed list of rights in order to avoid an imbalance that would be unfair in light of the privileges enjoyed by broadcasting organizations. Such an approach was necessary in order to avoid disadvantaging other rightsholders in the negotiations and influencing existing and emerging business models.

67. The representative of the International Federation of Actors (FIA) stressed the importance of ensuring a level playing field for all rightsholders by overcoming the persistent lack of acknowledgement of the rights for audiovisual performers. In respect of the protection of broadcasting organizations, the discussions had revealed indications of a possible way forward which was worth considering. Furthermore, the claims made by broadcasters in

relation to signal piracy, whether pre-broadcast or not, should be given careful consideration. It was necessary to clearly separate content-carrying signals from copyright protected content, for which a clear dividing line could be found in the fixation of copyright-protected content carried by the signal. Whatever use was made of a legal fixation amounted to exploitation of copyright content, not of the signal. FIA was therefore open to consider granting to broadcasters increased protection against signal piracy, for which the model offered by the Rome Convention should be employed, limiting protection to the exclusive rights provided therein, with the sole addition of protection for pre-broadcast signals.

68. The representative of the *Fédération internationale des associations de distributeurs de films* (FIAD) explained the importance of distributors as intermediaries between producers and broadcasters, including the fact that distributors were often entrusted by producers to organize the broadcasting of their films. Whereas it was quite legitimate that broadcasters were granted protection of the signal, that protection should be distinct from the protection of content. The FIAD representative also considered that discussions regarding the protection of webcasting activities were premature at the present stage.

69. The representative of the International Confederation of Music Publishers (CIEM) noted that music publishers had often expressed their concerns, shared by other rightholders, as regards the process of updating broadcasters' rights. CIEM recommended caution regarding the unclear effects of the possible creation of a new category of beneficiaries, the definition of which could comprise consumers acting as webcasters, as well as in respect of the creation of new economic rights, which could adversely affect business models currently in place involving licensing of content by existing rightholders. The representative of CIEM favored prohibiting any rights in relation to unlicensed content.

70. The representative of the Ibero-Latin-American Federation of Performers (FILAIIE) indicated that WIPO was not the appropriate forum for debating broadcasters' rights, as the issue belonged more properly to the field of telecommunications. Discussions on the rights of broadcasters should only take place after the successful conclusion of discussions related to the rights of audiovisual performers. The information provided during the Information Meeting justified the view that webcasters should be excluded from a possible treaty, which should also contain a limited definition of broadcasting and provide no more rights than those included in the Rome Convention.

71. The representative of the Asia Pacific Broadcasting Union (ABU) indicated that there was already a convergence of positions in favor of protection of traditional broadcasting. In contrast, the issues arising from the webcasting debate were too broad and complex to be dealt with in the proposed treaty. Moreover webcasting was relatively new in the Asia-Pacific region, where it was subject to minimal or no regulation. Also very few cases of piracy of webcast signals had been reported in the region. The Delegation expressed support for the position of the Delegation of Japan in favor of limiting the proposed treaty to traditional broadcasting and conducting separated discussions on webcasting.

72. The representative of the National Association of Broadcasters (NAB) stated that proponents of protection for webcasting had not properly demonstrated the need for its protection. There had not yet been a substantial experience, either legislative or judicial, at the national level. As the Delegation of Japan had indicated, further analysis was necessary before engaging in discussions related to the international protection of webcasting. Regarding the distinction between signals and content, NAB supported the positions of the European Community and its member States and of the Russian Federation. In relation to the

concerns of content owners about the blurring of the distinction between content and signals, it had to be taken into account that licensing offered a way to limit the rights of broadcasters over their broadcasts and their subsequent use.

73. The representative of the Union of National Radio and Television of Africa (URTNA) recalled the beginning of the debate on protection of broadcasters at the WIPO Conference of 1997 in Manila, Philippines. The discussions then were not burdened by webcasting, with its complexity and ambiguity. The longer the discussions on broadcasts, the more conclusions were likely to be slowed by new problems linked to technological innovation such as the Internet. In respect of the object of protection, the representative of URTNA was convinced that protection of signals would not only leave intact but enhance the protection of content by increasing the means to fight against piracy. The beneficiaries of the proposed treaty should be limited to those identified under the Rome Convention. The inclusion of webcasting would only negatively affect current discussions, given its vagueness and the complexity of business models based on it. Broadcasting organizations should be accorded full exclusive rights, as reflected in the proposal of the European Community and its member States.

74. The representative of the International Federation of Film Producers Associations (FIAPF) commended the Secretariat for organizing an excellent Information Meeting, from which the conclusion should be drawn that the inclusion of webcasting was premature. The representative expressed the view that the objective of the proposed treaty should be limited to fighting against signal piracy. Some of the rights contained in the Chairman's document CRP/SCCR/9/1 Rev. guiding the discussions were not related to signal protection as in item 3), Distribution of fixation. On the other hand, whereas items 6), Retransmission over the Internet (simultaneous) and 7), Deferred broadcasting/cable/Internet transmission based on fixation had been dealt with in the last session of the SCCR as mere suggestions, their inclusion in the new listing of rights seemed to erroneously imply some sort of consensus over those issues. Finally, in respect of the broadcast flag, the FIAPF representative considered that broadcasters should have the technological means for preventing the non-authorized redistribution of their signal over the Internet, and that that issue could well be dealt with in the proposed treaty.

75. The representative of the Digital Media Association (DiMA) indicated that the new instrument should focus in a neutral way on acts that deserve protection. Discussions had shown that the Internet benefited also creators and that it had become a commercial reality. He noted that webcasting required intensive ongoing investment, and that webcasters in many countries reached millions of listeners and viewers. The protection of investment had always been the basis of the protection and not the fact of performing a public service function. Internet webcasting was very similar to traditional broadcasting and the main differences were of a technical nature. DiMA took the view that the proposal of the United States of America reflected the basic aspirations of webcasters and recognized that webcasting was a 21<sup>st</sup> century technology. He indicated that answers to the questions put forward by the Delegation of Japan were given during the Information Meeting and also could be found in the proposal of the United States of America (document SCCR/9/4). In relation to the equitable remuneration issue, he indicated that that was a separate issue under the WPPT and that extension of that remuneration for the use of phonograms for communication to the public already included webcasting. Finally the representative stressed the importance of taking into account new technologies in the scope of the treaty.

76. The representative of the International Federation of Musicians (FIM) supported the position of a group of rightholders on the protection of broadcasting organizations.

Webcasting included different concepts and it was necessary to differentiate them. Streaming, which could be defined as the storage of data in a buffer, was only one such concept. All concepts that could fall under the webcasting umbrella had to be identified. Technological convergence was not relevant for that purpose. It would be necessary to provide for a clear definition of fixation, which was often confused with reproduction. The representative expressed concern that performers did not benefit from satisfactory protection in relation to audiovisual performances and were not protected against the unauthorized retransmission of audiovisual performances.

77. The representative of the International Federation of Journalists (IFJ) stated that the beneficiaries of the new instrument should be limited to traditional broadcasters, but was of the opinion that protection for unchanged and simultaneous retransmission of broadcast signals on any medium was premature and could threaten rights provided to authors and in particular journalists.

78. The representative of the Arab States Broadcasting Union (ASBU) indicated that it was advisable to draw a distinction between updating of the international protection of broadcasters and the protection of webcasting organizations. There were important differences between the two areas that were likely to increase in the future. There was a need to update international rules applicable to broadcasting that had been drafted more than 40 years ago, whereas in the case of webcasting new rules had to be drafted. Although that new activity required appropriate legal protection, the matter had to be examined in depth before a decision could be taken. Therefore priority should be given to updating the rights of traditional broadcasters. With regard to the right of communication to the public, the requirement of an entrance fee did not appropriately reflect developments that had taken place in the broadcasting sector since 1961. That reference should be eliminated from the new instrument to better reflect the evolution of broadcasting.

79. The representative of the North American Broadcasters Association (NABA) indicated that the broadcast flag and watermarks were technical mechanisms of protection for digital television broadcasting, which was progressively replacing analogue broadcasting. The representative thanked the FIAPF representative for its support regarding the inclusion of these technical tools in the new instrument. The protection granted was particularly useful in the fight against piracy and did not interfere with the rights of right owners and consumers' interests. The NABA representative was of the opinion that it was premature to extend the scope of the new treaty to webcasting.

80. The representative of the Caribbean Broadcasting Union (CBU) said the time was not ripe to extend protection to webcasters, and that economic considerations were not enough to justify such extension. Discussions should therefore concentrate on updating the rights of traditional broadcasting organizations, and protection of webcasters could be examined at a later stage.

81. The representative of the European Federation of Joint Management Societies of Producers for Private Audiovisual Copying (EUROCOPYA) endorsed the statement of the FIAPF representative. The new instrument should not have the effect of strengthening the economic position of broadcasting organizations. The development of webcasting was a positive factor which offered new windows for diffusion of movies. However the definition of webcasting was not clear, and although that activity was becoming economically important it did not justify combining the broadcasters' and webcasters' interests. Priority should be

given to the rights of traditional broadcasting organizations. The representative suggested a cautious approach in relation to coverage of cable transmissions in the possible treaty.

82. The representative of the Max-Planck-Institute for Foreign and International Patent, Copyright and Competition Law (MPI) opposed extending the scope of protection of the new instrument to webcasting. International protection should not be granted to new groups of beneficiaries without any clear demonstration of the need for so doing. That was particularly true in the current environment, which was characterized in much of the world by pro-public domain and anti-intellectual property protection movements. Stretching protection to new beneficiaries could affect the protection of traditional right owners such as authors, performers and producers. The list of rights to be granted to traditional broadcasters should not be overly broad, and items 11) to 13) on possible rights over decryption of encrypted broadcasts, rental of fixations and making available of unfixed broadcasts of the Chairman's list of rights (document CRP/SCCR/9/1 Rev.) should not be included, particularly as the treaty would prescribe minimum levels of protection.

83. The representative of the European Broadcasting Union (EBU) said that discussions should concentrate on updating the rights of traditional broadcasting organizations. The protection of webcasting had to be left for a later stage of negotiations. The protection of pre-broadcast signals was a priority. The possibility of rapid injunctive relief against signal piracy was of crucial importance for broadcasting organizations. Broadcasting organizations themselves should be able to take action against piracy under a new treaty and not only a telecommunications authority. In relation to the fixation right, clarification was required to include the making of still photographs of broadcasts under their use. In relation to the right of communication to the public, the restriction related to an entrance fee requirement was obsolete and a broad right should be granted without any restrictions. The representative invited delegations to consider granting a decryption right. The right of retransmission, whether by wire or wireless means, was a cornerstone in the edifice of protection for broadcasting organizations. The representative urged no further delay in the adoption of a treaty updating the rights of traditional broadcasters.

84. The Chairman referred to the question put forward by the Delegation of Australia and invited the Delegation of Japan to provide an answer.

85. The Delegation of Japan explained that it had suggested including unfixed broadcasts as a means of making available, to parallel the making available of fixed broadcasts. Technological developments made it possible to transmit broadcasts through the Internet upon reception of a broadcast signal, which meant that real-time broadcasts could be uploaded on a server without any fixation. The granting of a right of making available of unfixed broadcasts would accordingly strengthen the level of protection. The Japanese copyright law had been amended in 2002 to include such a right.

86. The Delegation of Canada expressed the view that the rights of broadcasters in the proposed treaty should not exceed those provided to other right owners in the content being broadcast, such as performers and producers. Many proposals, especially in respect of rights over authorized fixations of broadcasts, would provide new categories of protection and grant different levels of protection to the same content, depending upon the circumstances under which the fixation was made, for example in a studio or from a broadcast. This distinction would appear to be arbitrary and could be confusing to users. The balance among different right owners should also be carefully taken into account, and consideration should be given to

the fact that some countries preferred to adopt an anti-piracy approach to the proposed protection.

87. The Delegation of India stressed the importance of further analysis of a number of technical issues raised by non-governmental organizations, as well as the impact of the proposed treaty on countries with different levels of technological development. Moreover, the balance among right owners must be maintained. Finally, focus should be kept on the public interest, to ensure that access to information, as well as public education and research, were not jeopardized by new forms of protection. Piracy should be fought by technological means, rather than by the granting of new rights.

88. The Chairman stated that his concluding remarks would be made the following day. He invited delegations to analyze the proposals in respect of issues not yet discussed such as national treatment, the relation of the possible treaty to other treaties, and the beneficiaries of protection. He stated that before the conclusion of the meeting an assessment could be made on how discussions should continue in the future and how a unified draft could be developed. Finally, he stated that he would consider refining document CRP/SCCR/9/1 Rev. to take into account the views expressed during the debate.

89. The Chairman opened the floor to discussion of substantive issues including national treatment, term of protection, formalities, enforcement, application in time and administrative and final clauses. With respect to national treatment, the proposals followed either the model of the WPPT, using a model of rights specifically granted in the treaty, or the more global model of the Berne Convention (Article 5), providing more extensive obligations. The Chairman noted that the position of the majority on the question of national treatment favored the WPPT model, which could be used as a hypothetical basis for future discussions of a draft treaty text for broadcasting organizations. With respect to the beneficiaries, the proposals were that national treatment should be accorded to nationals of other parties to the treaty and additional criteria based on the location of the headquarters and of the transmitter.

90. The Delegation of India noted that national treatment should be made subject to the national security of the countries from which the broadcast originated.

91. The Chairman indicated that further discussions on such substantive issues could take place during the Committee's consideration of a single draft text of the new instrument. The Chairman then introduced the issue of eligibility, referring to the practice in treaty texts of including articles either at the beginning in defining its relation to other treaties or at the end of the substantive clauses, defining eligibility to become party to the treaty. Such articles included, for example, the requirement that parties must have adhered to another specified treaty, such as the WCT, the WPPT, or the requirement, at a minimum, that States be Members of WIPO. The Chairman stated that that issue could best be left for analysis during the process of drafting the text based on a single draft treaty or basic proposal.

92. The Delegation of India stated that the issue of the term of protection for rebroadcasting would need to be reconsidered in further discussions.

93. The Chairman reviewed the discussions so far on substantive issues, based on document CRP/SCCR/9/2. With respect to the object of protection, it was noted that the vast majority of delegations had taken the position that traditional broadcasting should be the core and substance of protection in the new instrument. Most delegations had agreed that cable-originated (program-carrying) signals should be within the scope of the new treaty,

although a single delegation still questioned whether cable should be included. Discussions remained open on how pre-broadcast (program-carrying) signals should be covered and, while the vast majority of delegations considered that such signals should enjoy some protection, there was a single voice questioning whether the last matter should not be covered under telecommunications legislation. The issue of protection of simultaneous streaming (signal) and Internet-originated streaming (signal) remained an open question, and the Delegation of the European Community had made a proposal indicating the willingness of the European Community and its member States to include in the scope of the treaty simultaneous streaming in unchanged form of broadcasts or of transmissions by cable. There had also been expressions of interest from other delegations for including that element. An open question remained as to the protection of Internet-originated streaming. One proposal had been received from the Delegation of the United States of America that would test how far the copyright community would go towards protecting signals transmitted over Internet networks. The Chairman noted that, on that issue, many delegations and non-governmental organizations did not support the inclusion of webcasting in the new treaty. However, some representatives of important economic interests took the opposite view, and there was consensus that webcasting had become important in economic and other terms. The vast majority of delegations agreed that the issue of protection of webcasting was important and deserved further examination, but felt that it should be dealt with separately from protection of traditional broadcasting. The issue of webcasting would thus remain on the future Agenda of the Committee. With respect to rights in rental of fixations, there was consensus that that should not be included in the new treaty instrument as no one had spoken in their favor. Similarly, with respect to the making available of fixed broadcasts, delegations demonstrated very limited interest. The subject of decryption of encrypted broadcasts had been moved for consideration, either as a separate right or to be covered by the same formula as obligations regarding technological measures of protection and rights management information. The Chairman noted that there was common ground on the issue of the right of fixation, as in the Rome Convention. With respect to the right of reproduction of fixations, also in the Rome Convention, common ground had been reached although a proposal had been made by at least one delegation that certain conditions should be imposed. Analysis would continue on the need for any conditions to serve to balance the rights and assess the effects of unconditional rights that had been granted in numerous national laws. There was common ground with respect to the right of distribution of fixations, with a question remaining as to whether possible conditions should be imposed. There was consensus on the inclusion of rebroadcasting rights in the new instrument, and the inclusion of the right of cable retransmission was considered to be of fundamental importance for inclusion in the new treaty in order to update the Rome Convention. The right of simultaneous retransmission over the Internet could be included in the new treaty, as that was among the most potentially important rights enjoyed by broadcasters. The right of deferred broadcasting, cable and Internet transmission based on fixation should also be included in the new treaty, whether separately or as part of the right of retransmission. There was agreement on the inclusion of the right of making available of fixed broadcasts, in the same context as it had been included in the WCT and the WPPT. There was agreement on the inclusion of the right of communication to the public in places accessible to the public, along the lines of the Rome Convention, although it appeared that the “entrance fee” test could possibly be removed. Finally, there was agreement on inclusion of obligations regarding technological measures of protection and rights management information.

94. The Delegation of India recalled its earlier remarks that, in light of the emerging debate on the subject of inclusion of cable and webcasting in the new treaty instrument, discussions on objects of protection, rights and obligations should remain open to allow further consideration by governments.

95. The Chairman confirmed the consensus that many issues, although identified, remained flexible and open to further discussions.

96. The Delegation of Canada asked whether the issue of the broadcast flag would be addressed in future and whether any delegations intended to make submissions on this point.

97. The Chairman clarified that the broadcast flag issue had been raised in a single reference by one delegation and that, while no forecast could be made, it was an important and evolving issue and the Committee would follow future developments.

#### OTHER ISSUES

98. The Secretariat recalled its earlier description of the documents available to the Committee, and confirmed that the Survey on the Implementation of Provisions of the WCT and WPPT, which dealt with national laws of 39 of the 41 countries that were party to the treaties, as well as the Study on Limitations and Exceptions in the Digital Environment, prepared by Professor Sam Ricketson of the Melbourne University, Australia, were now both available in paper form and on the WIPO website on the Internet. The Secretariat also referred to a number of studies and information materials that were in the pipeline and expected to be made available to Member States at the next session of the Committee, namely, a study on digital rights management describing the current situation; a guide to the substantive provisions of the international treaties on copyright and related rights that were administered by WIPO; a guide on licensing of copyright and related rights; and guidelines on the methodology for conducting surveys of the economic contribution of copyright industries. Finally, the Secretariat raised the issue of applicable law regarding cross-border disputes, transactions, uses and infringement of works of copyright and related rights, and noted that that was the subject of earlier studies by a group of consultants in December 1998. In particular, Professors André Lucas and Jane Ginsburg had prepared studies that had been updated for use in a WIPO forum on private international law that was held in Geneva in January 2001. That issue had been dealt with again in studies prepared for the informal *ad hoc* meeting on audiovisual performances that had been postponed because certain documents had not been finalized in translation. The Secretariat noted that those documents contained recommendations on private international law that could be among the subjects of discussion at the next Committee meeting.

99. The Chairman remarked that the breadth of work being undertaken by the Secretariat pointed to a possible new era of guided development of norms by the Organization, in the same manner as had been the case some 15 years earlier.

100. The Chairman recalled paragraph 125 of the report of SCCR/8 (document SCCR/8/9), in which reference was made to the work of the present session of the Standing Committee (SCCR/9), with the indication that “[i]f 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.” He recalled further the following reference made in the same paragraph to the tenth session of the



Standing 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.” The Chairman said that it was thus justified to consider next steps in general, to assess how mature the discussions were, and to explicitly consider the appropriate schedule towards the negotiation stage, defining the preparatory steps and the hypothetical time frame for a diplomatic conference to negotiate and adopt a treaty. It was necessary to look at the program for the next meeting of the SCCR in November 2003. An *ad hoc* informal meeting on the protection of audiovisual performances would be held during the same week. Moreover, an information meeting would be organized on the morning of the first day of the next session of the SCCR. To that effect the same formula employed on previous occasions could be used in the concluding remarks of the present meeting, indicating that the theme of the information meeting would be chosen by the Director General of WIPO, taking into account relevant developments on issues before the SCCR. The Chairman stated that the information meetings had contributed positively to the result of the work of the different sessions of the Standing Committee, and that it would be natural to leave for a later decision by the Director General the choice of an appropriate theme. Finally, consideration should also be given to the organization of the eleventh session of the Standing Committee, to take place in May or June 2004.

101. The Delegation of India referred to document CRP/SCCR/9/2, where items 11 to 13 from document CRP/SCCR/1 Rev. had become part of what the Chairman considered to be his assessment of the preliminary understanding on rights and obligations and were no longer characterized as suggested items for discussion. However, according to the Delegation, discussions had shown that many delegations continued to have serious concerns with regard to the scope and to the object of protection. The Delegation requested clarification on the Chairman’s approach.

102. The Chairman clarified that the list should be viewed flexibly, and that it only reflected the list of items to be considered further by the Committee and did not mean that there was consensus that such rights should be granted in the new treaty. The list of items was still open.

103. The Delegation of China supported the concern expressed by the Delegation of India and stated that webcasting was still a new concept for many countries and in particular for developing countries. Most of those countries had not had sufficient time to fully analyze the implications of webcasting. That was further supported by the small number of countries that had intervened during the discussions in the Committee. The Delegation took the view that the issues at stake should not be hastily discussed and that delegations had to be given more time, in particular to analyze webcasting. The Delegation further stated that it had not received authorization to express its position on the content of document CRP/SCCR/9/2.

104. The Chairman confirmed that indeed the proposal to include webcasting organizations had little support and said that his reply to the Delegation of India applied equally to the concerns of the Delegation of China.

105. The Delegation of Brazil endorsed the positions expressed by the Delegations of China and India. It thanked the Chairman for his explanations but considered that there was still a great deal of ambiguity in the assessment made. Document CRP/SCCR/9/2 did not fully reflect the contents of the discussions. The Delegation suggested modifying the title of the document to the effect that it was a list of issues to be further discussed in the light of the

Chairman's clarifications. The Delegation indicated that it also held reservations regarding the inclusion of some of the elements listed in the rights/obligations column of the Chairman's compilation.

106. The Delegation of Egypt supported the views expressed by the Delegations of Brazil, China and India. There were still major differences of opinion in relation to the object and the scope of protection. Further clarification and discussions were needed.

107. The Chairman agreed with the need for clarification, but stated that common ground had already been reached in particular in relation to the object of protection. In that respect, there was a general consensus for the protection of traditional broadcasting and of cable-originated programs. The issue of simultaneous cable retransmission was still open. Webcasting was becoming very important economically and deserved further analysis, as many delegations had said. He suggested modifying the title of document CRP/SCCR/9/2 as follows: "Chairman's Assessment of the Elements to be Further Reflected on and Discussed in the Tenth Session." He then read out to the Committee a proposed draft decision and presented to the Committee some additional comments, namely, that at its next session, the Committee would envisage a date to convene a diplomatic conference which could be in the first half of 2005 and that the Committee could envisage at its next session entrusting the preparation of a basic proposal to its Chairman.

108. The Delegation of the Russian Federation stated that the Committee had reached a point where it could envisage drafting a treaty to be submitted to a diplomatic conference. The timing suggested by the Chairman was acceptable to the Delegation. The next session of the Committee would probably be able to resolve the last pending issues, in respect of which there was not significant divergence. The Delegation intended to analyze further streaming activities.

109. The Delegation of India requested the Chairman, through the Secretariat, to circulate in writing his proposed decision for adoption by the Committee.

110. The Delegation of Switzerland stated that, after many years of discussions, time was ripe to conclude the issues in a diplomatic conference. Webcasting should not be assimilated to broadcasting and the proposal submitted by the European Community and its member States constituted a good basis for discussions, which its Delegation would consider carefully. A precise date for convening the diplomatic conference should be decided upon as soon as possible.

111. The Chairman noted he was aware that some delegations were in favor of a rapid conclusion of the negotiations, but other delegations needed more time to further analyze the issues at stake. That was the reason why a decision might only be made at the next session of the SCCR.

112. The Delegation of Egypt, speaking on behalf of the African Group, reiterated the statement which it had made the day before on behalf of the Group, stating that the Committee needed to focus on traditional broadcasting organizations. Webcasting represented an important issue that required a special study of the problems involved. The studies should serve to better address the means of protecting webcasting and that could be addressed separately in another legal instrument.

113. The Chairman presented document CRP/SCCR/9/2 Rev. which reflected his assessment of which elements were to be further reflected on and discussed. He also presented the draft decision on the future work of the SCCR, which had been distributed to the Committee.

114. The Delegation of Brazil proposed a rewording of paragraph (a)(ii) of the draft decision, clarifying that delegations needed to consider whether to organize a diplomatic conference when considering the timing of the preparatory steps.

115. The Delegation of India declared itself to be in broad agreement with the above-mentioned new documents presented by the Chairman. It also supported the statement of the Delegation of Brazil. The current debate should not preclude assessing the organization of a diplomatic conference, but it was necessary first to identify the beneficiaries and objects of a possible future treaty. It recalled the experience of the Diplomatic Conference on the Protection of Audiovisual Performances of 2000, where a lack of consensus on one article had prevented the adoption of a new treaty. Another such failure would undermine WIPO. Finally, it mentioned certain issues that might be discussed during the information meeting of the tenth session of the SCCR, among others, the interests of the general public, the public domain and access to information. In that respect it urged the Director General of WIPO to take into account the interests of developing countries regarding copyright protection when choosing the topics of the above-mentioned meeting.

116. The Delegation of France proposed to make uniform the terminology of the opening sentence of paragraph (a) of the draft decision and its sub-paragraph (i) in order to be consistent in referring to the protection of broadcasting organizations.

117. The Delegation of Egypt agreed with the previous statements of Brazil and India. Delegations should make the most out of the next session of the SCCR to make progress on the issue of protection of broadcasting organizations. In addition, it believed that the different issues raised by various delegations had to be taken into consideration when deciding the theme of the information meeting of the tenth session of November.

118. The Delegation of Senegal, speaking as Vice-Chair of the Committee, welcomed the open discussions on the international protection of broadcasting organizations. The Committee should make a choice as to the subject to focus on, and in that regard, it was clear that given the time already spent since 1996 to update protection of broadcasting organizations, that should have priority over webcasting. If other subjects were pursued, there was a real danger that no fruitful result would be achieved for either. The Delegation realized that most delegations needed time to reflect on that issue, but it urged them to devote all their efforts to the attainment of consensus in the coming session on the protection of broadcasting organizations.

119. The Chairman observed that the proposal made by the Delegation of France was valid and that the proposal of Brazil indicated what had been his intention in the drafting.

120. The Delegation of Mexico urged the Committee to continue its work, building on the results so far achieved to ensure the updating of the rights of broadcasting organizations, independently of how the debate on Internet developed.

121. The Chairman noted that there was consensus on the draft decision paragraph, with the changes proposed by the Delegation of Brazil to reword paragraph (a)(ii) of the draft decision, and by the Delegation of France to clarify the terminology.

122. The Delegation of Spain informed the Committee of its discussions with the WIPO Secretariat and based on the latter's proposal, its Government had offered to host an international conference on copyright in the digital age to be possibly held in the months of May or June of 2004 in Barcelona, Spain, within the framework of the Universal Forum of Cultures, a four-month international event to be organized in that city the same year. It informed the Committee of the objectives, purposes and content of both the Universal Forum and the WIPO Conference. That Conference, like the Universal Forum itself, was to contribute to the realization of peace, sustainable development and cultural diversity in such a way that globalization would proceed in a manner reflecting shared ethical values.

123. The Secretariat expressed the deep appreciation of WIPO of the generous offer of the Government of Spain and confirmed the acceptance by the Director General of WIPO of that offer. The Secretariat and the Government of Spain were in close contact regarding the modalities and other details. The likely dates for the conference were May 27 and 28, 2004. All Member States, NGOs and IGOs would be kept informed about that conference in due course.

124. The Delegation of Portugal welcomed the proposal made by the Government of Spain on the organization of that international conference and wished it all success.

125. The Delegation of Brazil greeted the initiative of the Government of Spain and WIPO in organizing that international conference. In its view, it was a meeting that was timely useful and interesting and would meet with success.

126. The Delegation of Egypt thanked the Spanish Government and WIPO for their initiative in the organization of the conference, which would certainly contribute to rich discussions on copyright matters.

127. The Delegation of Mexico congratulated the Government of Spain and WIPO on their initiative in organizing such an important conference. Discussions there would clearly help to integrate the principles of sustainable development into the copyright and related rights protection, and to identify points of convergence among participants regarding the latter. The Delegation also praised the work and personal qualities of a member of the Delegation of Spain who would be leaving Geneva shortly.

128. The Delegation of Panama thanked the Delegation of Spain and WIPO for the information on the conference and expressed its full support to that initiative. It recalled the successful Ibero-American Copyright Congress which its Government hosted in October last year. That Congress was jointly organized by Latino-American copyright circles and WIPO.

129. The Delegation of Belarus, speaking on behalf of the Group of Central and Eastern European States, joined the previous delegations in welcoming the initiative of the Government of Spain and WIPO in organizing an international conference which promised to be a successful one.

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

*(a) The protection of broadcasting organizations would be the main point on the Agenda of the tenth session of the Standing*

*Committee:*

*(i) delegations are invited to consider all elements of a possible new instrument on the protection of broadcasting organizations in order to provide a basis for the preparation of a basic proposal;*

*(ii) delegations are also invited to consider a suitable timetable for the further preparatory steps and the possibility of organizing a diplomatic conference;*

*(iii) the Standing Committee, in its tenth session, should be ready to decide on the preparation of a basic proposal.*

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

*(c) An information meeting would be organized in the context of the tenth session of the Standing Committee. The theme of that meeting would be chosen by the Director General of WIPO, taking into account relevant developments on issues before the Standing Committee.*

*(d) The next (10<sup>th</sup>) session of the Standing Committee would take place from November 3 to 5, 2003.*

*(e) Databases: the issue would be carried forward to the Agenda of the eleventh session of the Standing Committee.*

ADOPTION OF THE REPORT

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

132. The Chairman closed the session.

[Annex follows]

ANNEXE/ANNEX

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

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José Sérgio DE CALHEIROS DA GAMA, conseiller juridique, Mission permanente, Genève

RÉPUBLIQUE DE CORÉE/REPUBLIC OF KOREA

Young-Ah LEE (Ms.), Deputy Director, Copyright Division, Ministry of Culture and Tourism, Seoul

Young-Kuk PARK, Minister, Permanent Mission, Geneva

Sung-Ho LEE, Judge, Seoul District Court, Seoul

Jay Hyun AHN, Intellectual Property Attaché, Permanent Mission, Geneva

RÉPUBLIQUE DE MOLDOVA/REPUBLIC OF MOLDOVA

Dorian CHIROSCA, directeur général, Agence nationale du droit d'auteur, Chisnau

RÉPUBLIQUE DÉMOCRATIQUE DU CONGO/DEMOCRATIC REPUBLIC OF THE CONGO

Fidele SAMBASSI, ministre conseiller, Mission permanente, Genève

RÉPUBLIQUE TCHÈQUE/CZECH REPUBLIC

Hana MASOPUSTOVÁ (Ms.), Head, Copyright Department, Ministry of Culture, Prague

ROUMANIE/ROMANIA

Rodica PÂRVU (Mme), directrice générale, Office roumain pour le droit d'auteur (ORDA), Bucharest

Anca IONESCU (Mme), experte, Office roumain pour le droit d'auteur (ORDA), Bucharest

Elena BISTIU (Mme), diplomate, Bucharest

ROYAUME-UNI/UNITED KINGDOM

Roger KNIGHTS, Assistant Director, Copyright Directorate, The Patent Office, Department of Trade and Industry, London

Brian SIMPSON, Assistant Director, Copyright Directorate, The Patent Office, Department of Trade and Industry, London

SÉNÉGAL/SENEGAL

Ndèye Abibatou Youm DIABÉ SIBY (Mme), directrice générale, Bureau sénégalais du droit d'auteur (BSDA), Dakar

SERBIE-ET-MONTÉNÉGRO/SERBIA AND MONTENEGRO

Ljiljana RUDIĆ-DIMIĆ (Mrs.), Head, Copyright and Related Rights Department, Belgrade

Ivana MILOVANOVIĆ (Mrs.), Third Secretary, Permanent Mission, Geneva

SLOVAQUIE/SLOVAKIA

Martin KMOŠENA, Third Secretary (Economic Affairs), Permanent Mission, Geneva

SOUDAN/SUDAN

Ahmed Elshafie FARAG, Director, Manager of Censorship Department, The Federal Council for Literary and Artistic Works, Khartoum

Christopher JADA, Second Secretary, Permanent Mission, Geneva

SUÈDE/SWEDEN

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

SUISSE/SWITZERLAND

Catherine METTRAUX KAUTHEN (Mme), juriste, Division du droit d'auteur et des droits voisins, Institut fédéral de la propriété intellectuelle, Berne

Medea Anna ELSIG (Mme), avocate, Institut fédéral de la propriété intellectuelle, Berne

THAÏLANDE/THAILAND

Kanyawan SOMBUTSIRI (Miss), Legal Officer, Copyright Office, Department of Intellectual Property, Nonthaburi

Supark PRONGTHURA, First Secretary, Permanent Mission, Geneva

TUNISIE/TUNISIA

Mounir BEN RJIBA, conseiller (affaires étrangères), Mission permanente, Genève

Mehdi NAJAR, chargé de la documentation, la comptabilité et les finances, Organisme tunisien de protection des droits d'auteurs (OTPDA), Tunis

TURQUIE/TURKEY

Yasar OZBEK, conseiller juridique, Délégation de la Turquie auprès de l'Organisation mondiale du commerce (OMC), Genève

UKRAINE

Tamara DAVYDENKO (Mrs.), Head of Division, State Department of Intellectual Property, Ministry of Education and Science, Kyiv



URUGUAY

Alejandra DE BELLIS (Ms.), First Secretary, Permanent Mission, Geneva

VENEZUELA

Virginia PÉREZ PÉREZ (Srta.), Primera Secretaria, Misión Permanente, Ginebra

ZAMBIE/ZAMBIA

Edward CHISANGA, First Secretary, Permanent Mission, Geneva

II. AUTRES MEMBRES/  
NON-STATE MEMBERS

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

Jörg REINBOTHE, Head, Unit E3- Copyright and Neighbouring Rights, Directorate-General Internal Market, Brussels

Rogier WEZENBEEK, Administrator, Unit E3- Copyright and Neighbouring Rights, Directorate-General Internal Market, Brussels

Patrick RAVILLARD, Counsellor, Permanent Delegation, Geneva

III. ORGANISATIONS INTERGOUVERNEMENTALES/  
INTERGOVERNMENTAL ORGANIZATIONS

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

Petia TOTCHAROVA (Mrs.), Legal Officer, Cultural Enterprise and Copyright Section, Paris

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

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

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

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

ORGANISATION 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 MOUAKI BENANI, Counsellor, Permanent Delegation, Geneva

ORGANISATION ARABE POUR L'ÉDUCATION, LA CULTURE ET LA SCIENCE (ALECSO)/ARAB LEAGUE EDUCATIONAL, CULTURAL AND SCIENTIFIC ORGANIZATION (ALECSO)

Rita AWAD (Miss), Director, Department of Culture and Communication, Tunis

ORGANISATION DE LA CONFÉRENCE ISLAMIQUE (OCI)/ORGANIZATION OF THE ISLAMIC CONFERENCE (OIC)

Babacar BA, ambassadeur, observateur permanent, Mission permanente, Genève

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

Lyes BELARIBI, directeur, Centre d'échange, Alger

IV. ORGANISATIONS NON GOUVERNEMENTALES/  
NON-GOVERNMENTAL ORGANIZATIONS

Associação Brasileira de Emisoras de Rádio e Televisão (ABERT): Alexandre JOBIM (General Counsel, Brasilia)

Associação Brasileira de Propriedade Intelectual (ABPI)/Brazilian Intellectual Property Association (ABPI): Victor DRUMMOND (représentant, Rio de Janeiro)

Associação Paulista de Propriedade Intelectual (ASPI): Ivana CRIVELLI (Sra.) (Directora, São Paulo)

Association américaine de marketing cinématographique (AFMA)/American Film Marketing Association (AFMA): Lawrence SAFIR (Chairman, AFMA Europe, London)

Association canadienne de télévision par câble (ACTC)/Canadian Cable Television Association (CCTA): Jay 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 (Mrs.) (Head of Office, Brussels); Moufida KOUKI (Miss) (Bruxelles)

Association des télévisions commerciales européennes (ACT)/Association of Commercial Television in Europe (ACT): Tom RIVERS (Consultant, London); Claus GREWENIG (Legal Adviser, Multimedia/Legal Affairs, Berlin)

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

Association nationale des organismes de radiodiffusion (NAB)/National Association of Broadcasters (NAB): Benjamin F.P. 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 A. WANROOIJ (Public Affairs (BUMA/STEMRA), The Hague)

Center for Performers' Rights Administration (CPRA): Samuel Shu MASUYAMA (Director, Legal and Research Department, Tokyo)

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

Civil Society Coalition (CSC): Manon RESS (Miss) (Research Associate, Consumer Project on Technology, Washington, D.C.)

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

Confédération internationale des sociétés d'auteurs et compositeurs (CISAC)/International Confederation of Societies of Authors and Composers (CISAC): Éric BAPTISTE (secrétaire général, Neuilly-sur-Seine, France); David UWEMEDIMO (directeur juridique, Neuilly-sur-Seine, France)

Co-ordinating Council of Audiovisual Archives Associations (CCAAA): Anselm Crispin JEWITT (Convenor, London)

Digital Media Association (DiMA): Seth GREENSTEIN (Attorney at Law, Washington, D.C.)

Digital Video Broadcasting (DVB): Carter ELTZROTH (Legal Director, Geneva)

European Bureau of Library, Information and Documentation Associations (EBLIDA): María Pia GONZÁLEZ PEREIRA (Ms.) (Director, The Hague)

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 LA BOUVERIE (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); Paloma LÓPEZ PELÁEZ (Sra.) (Asesora Jurídica, Madrid)

Fédération internationale de l'industrie phonographique (IFPI)/International Federation of the Phonographic Industry (IFPI): Barney WRAGG (Vice President, London); Maria MARTIN-PRAT (Ms.) (Deputy General Counsel, Director of Legal Policy, London); Valérie LÉPINE-KARNIK (Mrs.) (Deputy Chief Executive, Paris); Ute DECKER (Miss) (Senior Legal Adviser, Legal Policy Department, London); Olivia REGNIER (Miss) (Senior Legal Adviser, European Regional Counsel, Brussels); Neil TURKEWITZ (Executive Vice President (RIAA), Washington, D.C.)

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

Fédération internationale des associations de bibliothécaires et des bibliothèques (FIAB)/International Federation of Library Associations and Institutions (IFLA): Jarka LOOKS (Mrs.) (Vice-Director, Head Librarian, Lausanne, Switzerland)

Fédération internationale des associations de distributeurs de films (FIAD)/International Federation of Associations of Film Distributors (FIAD): Antoine VIRENQUE (secrétaire général, Paris)

Fédération internationale des associations de producteurs de films (FIAPF)/International Federation of Film Producers Associations (FIAPF): John BARRACK (National Vice President, Industrial Relations and Counsel, Toronto); Shira PERLMUTTER (Ms.) (AOL Time Warner, New York)

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

Fédération internationale des musiciens (FIM)/International Federation of Musicians (FIM): Benoît MACHUEL (secrétaire général, 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): María GABALDÓN (Mrs.) (Brussels)

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 (Executive Vice President, Government Relations, Washington General Counsel, Washington, D.C.)

International Music Managers Forum (IMMF): Nick ASHTON-HART (Executive Director, London); David Richard STOPPS (Special Advisor, London)

International Video Federation (IVF): Theodore SHAPIRO (Legal Adviser, Brussels)

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

National Association of Broadcasters (NAB-Japan): Shinichi UEHARA (Director, Copyright Division, Asahi Broadcasting Corporation (ABC), Osaka); Masataka KOBAYASHI (Copyright Administration and Management, Content Businesses Division, Nippon Television Network Corporation (NTV), Tokyo); Hidetoshi KATO (Programming Division, Copyright Department, Television Tokyo Channel 12, Tokyo); Honoo TAJIMA (Deputy Director, Copyright Division, Tokyo); Reiko BLAUENSTEIN-MATSUBA (Interpreter, Geneva); Kazuko YOSHIDA INGHAM (Interpreter, London)

North American Broadcasters Association (NABA): Erica REDLER (Miss) (General Counsel and Senior Vice President, Policy and Legal Affairs, Canadian Association of Broadcasters (CAB), Ottawa); Ronald C. WHEELER (Senior Vice President, Content Protection, Fox Group, Beverly Hills, California); Andrew G. SETOS (President, Engineering, Fox Group, Los Angeles); Michael McEWEN (Secretary General, Toronto); Alejandra NAVARRO GALLO (Mrs.) (Intellectual Property Attorney, Zug, Switzerland)

Software Information Center (SOFTIC): Shigeki YANAGISAWA (General Manager, Research Department, Tokyo)

Union de radiodiffusion Asie-Pacifique (ABU)/Asia-Pacific Broadcasting Union (ABU): Fernand ALBERTO (Legal Officer, Kuala Lumpur); Maloli ESPINOSA MANALASTAS (Mrs.) (Vice President, Government, Corporate Affairs, ABS-CBN Broadcasting Corporation, Quezon City, Philippines); Ryohei ISHII (Senior Associate Director, Multimedia Development Department, Japan Broadcasting Corporation, Tokyo); Atsushi IIZUKA (Secretary, Multimedia Development Department, Japan Broadcasting Corporation, Tokyo); Eun MUN-KI (Director, Contents Business Development and Strategy, Korean Broadcasting System (KBS), Seoul)

Union des radiodiffusions des caraïbes (CBU)/Caribbean Broadcasting Union (CBU): J. Patrick COZIER (Secretary General, Barbados); Victor A. FERNANDES (Managing Director, Chief Executive Officer, Starcom Network Inc., Barbados)

Union des radiodiffusions et télévisions nationales d'Afrique (URTNA)/Union of National Radio and Television Organizations of Africa (URTNA): Madjiguène MBAYE-MBENGUE (Mme) (conseillère juridique, Dakar); Hezekiel OIRA (Head, Legal Department; Secretary, Kenyan Broadcasting Corporation, Nairobi)

Union européenne de radio-télévision (UER)/European Broadcasting Union (EBU): Moira BURNETT (Ms.) (Legal Adviser, Legal and Public Affairs Department, Geneva); Heijo RUIJSENAARS (Legal Adviser, Legal and Public Affairs Department, Geneva)

Union internationale des confédérations de l'industrie et des employeurs d'Europe (UNICE)/Union of Industrial and Employers' Confederations of Europe (UNICE): Brigitte LINDNER (Ms.) (Adviser, IFPI, Zurich)

Union internationale des éditeurs (UIE)/International Publishers Association (IPA): Melanie SENGUPTA (Miss) (Geneva)

Union Network International–Media and Entertainment International (UNI-MEI): Bernie CORBETT (Member; General Secretary, Writers' Guild of Great Britain, London)

Yahoo Inc.: Bob ROBACK (General Manager, Music, Santa Monica, California)

#### V. BUREAU/OFFICERS

Président/Chairperson: Jukka LIEDES (Finland)

Vice-présidents/  
Vice-Chairpersons: Ndèye Abibatou Youm DIABÉ SIBY (Mme) (Sénégal)  
Rodica PÂRVU (Mrs.) (Romania)

Secrétaire/Secretary: Jørgen BLOMQVIST (OMPI/WIPO)

#### VI. SECRETARIAT DE L'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); Víctor VÁZQUEZ LÓPEZ  
(conseiller juridique principal/Senior Legal Counsellor); Barbara C. PIDERIT (Mme)  
(administratrice de programme/Program Officer); Dimiter GANTCHEV (consultant  
principal/Senior Consultant)

Division du droit d'auteur/Copyright Law Division:  
Jørgen BLOMQVIST (directeur/Director); Boris KOKIN (conseiller juridique  
principal/Senior Legal Counsellor); Carole CROELLA (Mlle) (conseillère/Counsellor);  
Geidy LUNG (Mlle) (juriste/Legal Officer)

Division du commerce électronique, des techniques et de la gestion du droit  
d'auteur/Copyright E-Commerce, Technology and Management Division:  
Richard OWENS (chef/Head); Larry ALLMAN (conseiller juridique principal/Senior Legal  
Counsellor); Lucinda JONES (Mlle) (juriste principal/Senior Legal Officer); Takeshi  
HISHINUMA (juriste adjoint/Associate Officer); Arturo ANCONA (consultant  
principal/Senior Consultant)

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