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WORLD INTELLECTUAL PROPERTY ORGANIZATION
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Second Special Session of the

STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

Geneva, June 18 to 22, 2007

DRAFT REPORT

prepared by the Secretariat

1. The Standing Committee on Copyright and Related Rights (hereinafter referred to as the ”Standing Committee”, the “Committee” or the “SCCR”) held its second special session in Geneva from June 18 to 22, 2007.

2. The following Member States of the World Intellectual Property Organization (WIPO) and/or members of the Berne Union for the Protection of Literary and Artistic Works were represented in the meeting: Afghanistan, Algeria, Angola, Argentina, Australia, Austria, Barbados, Belgium, Benin, Botswana, Brazil, Bulgaria, Burundi, Cambodia, Canada, Chile, China, Colombia, Costa Rica, Côte d’Ivoire, Croatia, Czech Republic, Democratic Republic of the Congo, Denmark, Ecuador, Egypt, Estonia, Finland, France, Germany, Ghana, Greece, Haiti, Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Japan, Kenya, Latvia, Lebanon, Luxembourg, Malaysia, Malawi, Mexico, Moldova, Morocco, Netherlands, New Zealand, Nepal, Nigeria, Norway, Oman, Pakistan, Peru, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Senegal, Serbia, Singapore, Slovenia, South Africa, Spain, Sudan, Sweden, Switzerland, Tajikistan, Thailand, The former Yugoslav Republic of Macedonia, Tunisia, Turkey, Uganda, United Kingdom, United States of America, Uruguay, Uzbekistan, Zimbabwe (83).

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

4. The following intergovernmental organizations took part in the meeting in an observer capacity: International Labour Organization (ILO), World Trade Organization (WTO), *Organisation Internationale De La Francophonie* (OIF), South Centre, African Union, Arab Broadcasting Union (ASBU) (6).

5. The following non-governmental organizations took part in the meeting as observers: Asia-Pacific Broadcasting Union (ABU), *Association brésilienne des émetteurs de radio et de télévision* (ABERT), Association of Commercial Television in Europe (ACT), Association of European Radios (AER), Canadian Cable Television Association (CCTA), Central and Eastern European Copyright Alliance (CEECA), Center for International Environmental Law (CIEL), Centre for Performers' Rights Administrations (CPRA) of GEIDANKYO, Civil Society Coalition (CSC), Coalition of Sports Organizations (Sports Coalition), Computer and Communications Industry Association (CCIA), Digital Media Association (DiMA), Electronic Frontier Foundation (EFF), Electronic Information for Libraries (eIFL.net), European Broadcasting Union (EBU), European Digital Rights (EDRi). European Federation of Joint Management Societies of Producers for Private Audiovisual Copying (EUROCOPYA), Exchange and Cooperation Centre for Latin America (ECCLA), German Association for the Protection of Industrial Property and Copyright Law (GRUR), Ibero-Latin-American Federation of Performers (FILAIE), Independent Film and Television Alliance (IFTA), Information Society Project at Yale Law School (Yale ISP), Information Technology Association of America (ITAA), International Affiliation of Writers' Guilds (IAWG), International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), International Association of Broadcasting (IAB), International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), International Center for Trade and Sustainable Development (ICTSD), International Chamber of Commerce (ICC), International Confederation of Societies of Authors and Composers (CISAC), International Federation of Actors (FIA), International Federation of Associations of Film Distributors (FIAD), International Federation of Film Producers Associations (FIAPF), International Federation of Journalists (IFJ), International Federation of Library Associations and Institutions (IFLA), International Federation of Musicians (FIM), International Federation of the Phonographic Industry (IFPI), International Intellectual Property Alliance (IIPA), International Literary and Artistic Association (ALAI), International Music Managers Forum (IMMF), International Publishers Association (IPA), International Video Federation (IVF), IP Justice, Knowledge Ecology International (KEI), Max-Planck-Institute for Intellectual Property, Competition and Tax Law (MPI), National Association of Broadcasters (NAB), North American Broadcasters Association (NABA), Public Knowledge, Sports Rights Owners Coalition (SROC), Third World Network Berhad (TWN), Union Network International–Media and Entertainment International (UNI-MEI), Union of National Radio and Television Organizations of Africa (URTNA), United States Telecommunications Association (USTA) (53).

OPENING OF THE SESSION

6. The session was opened by Mr. Michael Keplinger, Deputy Director General, who welcomed the participants on behalf of Dr. Kamil Idris, Director General of WIPO.

ELECTION OF A CHAIR AND TWO VICE-CHAIRS

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

ADOPTION OF THE AGENDA

8. The Committee adopted the Agenda as set out in document SCCR/S2/1.

ADOPTION OF THE REPORT OF THE First special session

9. The Chair noted that due to the late distribution of the draft there would still be the possibility for delegations which had changes to be made to their own interventions to submit amendments in written form to the Secretariat before the end of the following week. After that deadline, the report of SCCR/S1 would be finalized. Under those conditions, the Committee adopted the report.

ACCREDITATION OF CERTAIN NON-GOVERNMENTAL ORGANIZATIONS

10. The Chair noted that document SCCR/S2/2 contained requests by the Coalition of Sports Organizations (Sports Coalition), Knowledge Ecology International (KEI) and the Sports Rights Owners Coalition (SROC) to be admitted as *ad hoc* observers.

11. The Committee gave its consent to the admission of those non-governmental organizations as *ad hoc* observers.

PROTECTION OF BROADCASTING ORGANIZATIONS

12. The Chair noted that delegations had been invited to attend two meetings which were the second special session of the Standing Committee of Copyright and Related Rights and the Preparatory Meeting for the Diplomatic Conference which could be held only after agreement on the Basic Proposal had been achieved by the Standing Committee. The task which had been assigned to the Standing Committee by the WIPO General Assembly last September was to finalize and agree on a basic proposal. The need to update the norms and standards of protection for broadcasting organizations in light of the technological requirements had been recognized by many delegations immediately after the Diplomatic Conference of 1996 and this was manifested clearly at the WIPO Worldwide Symposium on Broadcasters' Rights which had been held in Manila in 1997. Negotiations on the update of the broadcasters' protection had now been going on for almost ten years. At the time when they started, approximately 50 States were party to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention), which provided a framework for the international protection of broadcasting organizations. Membership of the Rome Convention had today risen to 86 States, so additional 30 countries which provided protection at national level for broadcasting organizations had been identified. Therefore, it can be estimated that around 110 countries were currently providing protection on the national level for broadcasting organizations in the broad system of intellectual property as related right or copyright. Between 1999 and

2003 to 2004, some 15 treaty language proposals had been submitted to the WIPO Secretariat from all parts of the world, which had been merged into a set of consolidated documents. A first consolidated text, followed by a revised consolidated text and by a second revised consolidated text, had been released. One of the last proposals submitted had been the one from the United States of America which had proposed to grant protection to webcasting organizations in the same way as for traditional broadcasting organizations and cablecasting organizations. That issue had formed part of the global package until May 2006. Although the proposal had been submitted by one Member State only, a growing interest had been expressed for that form of protection and another proposal relating to simulcasting, wireless broadcasting made simultaneously also on the Internet, had been proposed. However, in May 2006 it had been decided to separate on one track issues relating to traditional broadcasting and cablecasting and on another track webcasting and simulcasting, which were to be dealt with only after the adoption of the Treaty on traditional broadcasting and cablecasting at a diplomatic conference. The mandate received from the General Assembly in 2006 made it clear that the Revised Draft Basic Proposal was the Committee's official working document, but the first special session in January 2007 highlighted the complexity of that inclusive document and the difficulties in streamlining it in order to submit it, with any hope of success, to a diplomatic conference. For that reason, at the January meeting the Chair had submitted some drafting elements in the form of non-papers which had then been combined into a consolidated package. A strong opinion that the new instrument had to be based on exclusive rights had been expressed. The first special session had also mandated the Chair to prepare a revised non-paper which was sent to Member States for comments and was released in its final version on April 20, 2007. The mandate of the General Assembly indicated that the protection had to be provided on a signal-based approach. However, different opinions to what could be understood as signal-based had been expressed. The non-paper provided for the minimum necessary core protection and referred to instances where live signals were being used. The idea that a signal protection approach could not give rise to a rights-based approach was not shared by all delegations. A signal-based approach could also be based on other kinds of protection than exclusive rights. The main objective of the new instrument was to provide protection against signal theft. Definitions had been updated in the new non-paper and there was a general understanding that the instrument would only provide for minimum norms. The number of rights and protection clauses had been reduced to the minimum necessary, and it had been emphasized in the introductory notes of the non-paper that the whole system of protection referred to transmission to the public only, which implied that any retransmission which was not directed to the public would not be covered by the instrument. A flexible clause on limitations and exceptions had been provided in Article 10. The Chair emphasized that the document SCCR/15/2 Rev. was the main document and the non-papers had to be looked at as a tool to facilitate progress in the Committee and for the preparation of a basic proposal to be presented to the diplomatic conference.

13. The Delegation of Bangladesh, on behalf of the Asian Group, stated that document SCCR/15/2 Rev. remained the basic document for the SCCR process and that the meeting had to adhere to the decisions of the General Assembly applicable to the SCCR. In that respect, the new instrument had to be signal-based; it should be restricted to traditional broadcasting and cablecasting and not include webcasting nor simulcasting or computer networks; it should not affect the rights in the content contained in a broadcast; it should not impede the free flow of, or access to, information, and neither should the use of technological measures of protection. It should take into account the public policy objectives of the Member States and it had to provide for a fair balance of protection of the broadcasting organizations vis-à-vis the rights of others and the general public.

14. The Delegation of El Salvador requested additional explanations on how Article 7 had been drafted.

15. The Delegation of Barbados on behalf of the Group of Latin American and Caribbean Countries (GRULAC), stated that the views of the Group members differed widely on the issues of objective, specific scope and object of protection, as contained in the Revised Draft Basic Proposal, document SCCR/15/2 Rev., and that no common position could be stated apart from indicating that the norm-setting activity had to be a participatory process taking into consideration the interests and priorities of all Member States and the viewpoints of other stakeholders, including accredited IGOs and NGOs. The need to ensure a fair balance between the protection of the rights of broadcasting organizations, including cablecasting organizations, and the rights of copyright and related rights holders was reiterated as well as the need to ensure a fair balance between, on the one hand, the protection of right holders in general, and on the other, the larger public interest. Any agreement reached on the issues of objective, specific scope and object of protection had to be founded on a signal-based approach, in accordance with the mandate of the 2006 WIPO General Assembly. GRULAC member States, in their individual interventions, would continue to work constructively.

16. The Delegation of China stated that it was not in a position to make any comments on the question of the organization of the session proposed by the Chairman, since it had not been invited to the Coordinators' meeting held earlier, despite the fact that it was a recognized coordinating country.

17. The Delegation of Algeria, on behalf of the African Group, stated its preference for the work to be organized in open sessions for all countries and reserved its position on substantive issues for a later stage.

18. The Delegation of the Federal Republic of Germany, on behalf of the European Community and its 27 member States, noted that the negotiations had now reached a decisive stage and that the second special session would be of vital importance for the protection of broadcasting organizations in the digital world. It recalled the mandate formulated by the last General Assembly stating that a diplomatic conference would only be convened if the Committee could agree on and finalize on a signal-based approach the objectives, specific scope and object of protection, with a view to submitting to a diplomatic conference a revised basic proposal, which would amend the agreed relevant parts of the Revised Draft Basic Proposal, i.e. document SCCR/15/2 Rev. At the end of the meeting, a profound conviction that the outcome of the discussions could provide the basis for a successful conclusion of the diplomatic conference had to be shared by all Member States. Active and constructive work had been made by the Delegation in the context of the WIPO efforts to elaborate an updated regime for the international protection of broadcasting organizations, and it would continue to do so in a constructive and inclusive manner.

19. The Delegation of Pakistan supported the statement made on behalf of the Asian Group and sought clarification regarding paragraph 6 of the non-paper introductory notes.

20. The Chair stated that the questions of the Delegations of El Salvador and of Pakistan were inter-related. All those who had read the document knew that paragraph 6 of the introductory notes related to the question why and how Article 7 of the non-paper had been formulated. The meeting in itself was a kind of three-step-test since it was necessary to look at what was acceptable to those delegations which only wanted to see a small and limited

treaty, and at the same time what was acceptable to those wanting a long series of exclusive rights. In the preparation of the non-paper it had proved very difficult, as note 11 revealed, to combine positions that were very far from each other, and broadcasting organizations had delivered a clear message that if the treaty would not be based on some elementary and indispensable exclusive rights, the whole process should be abandoned. That was why the retransmission right had been based on an exclusive right, but the list of exclusive right was very short compared to the previous one. That was in order to accommodate those who could not accept the granting of exclusive rights. The possibility of considering other kinds of protection was, however, always open and such alternative had been explored in Article 8 on the protection of pre-broadcast signals. The non-paper was trying to put forward some possible compromises for a very limited treaty.

21. The Delegation of Egypt noted that it had received the non-paper in electronic form via its mission in Geneva, and had submitted comments also via the mission. However, the latest version of the non-paper had not incorporated those comments, and it asked whether the non-paper contained all delegations' comments or only the Chairs' comments.

22. The Chair noted that other delegations that had submitted comments could find themselves in the same position as Egypt, which had diligently submitted its comments, as it had not been possible to include a reference to every comment in the non-paper. Upon receiving the comments, a compilation had been made of all comments for full analysis in the preparatory work. Note 11 on the third page of the document recognized that not all comments could be reflected in the final non-paper. It was necessary to keep the non-paper as simple as possible, leaving issues to be discussed by the Committee.

23. The Delegation of India questioned whether the non-paper would be discussed by general comments followed by an article by article discussion or otherwise.

24. The Chair noted that many delegations would probably first require clarification of different aspects of the non-paper, and they were still free to take the floor at any time to discuss the non-paper as a whole. The work would then be divided into clusters to discuss different parts of the non-paper, and a work plan would be devised in that respect.

25. The Delegation of Algeria, on behalf of the African Group, reaffirmed the importance of the issue of protection of broadcasting organizations, and the need for in-depth discussion so as to reach consensus on the basic document to be submitted to the diplomatic conference. It noted that the non-paper represented a useful, but not exclusive basis for discussion, whereas document SCCR/15/2 Rev. remained the basis of discussions. The scope of protection should reflect the balance between the public interest and any new rights given to right holders so as to protect the social role played by broadcasting organizations, in the spirit of the WIPO plan of action for development and the inclusion of the development dimension in WIPO's mandate. It noted, first, that the draft treaty should emphasize giving broadcasting organizations rights to prevent signal piracy. Any broadening of the scope of application beyond the prevention of signal piracy would run counter to the objectives which the text claimed to protect. The rights of right holders and the rights of the public to have access to information and to knowledge should not be circumvented under the pretext of giving the broadcasting organizations the rights they claimed. However, Article 7, read in light of Article 1 of the non-paper, appeared to go beyond signal protection because it granted an exclusive right over retransmission and deferred transmission of broadcasts. Second, exceptions and limitations with respect to the protection of broadcasting organizations represented a special interest in reconciling the rights of the broadcasting organizations and

the rights of the public, which gave States, and in particular developing and least developed countries, sufficient space in which to establish their own priorities and protect the public interest. The basic text should therefore seek to establish a balance between the rights granted to broadcasting organizations and fundamental policies to protect intellectual property pertaining particularly to access to information and access to knowledge. In that respect, the African Group recommended that the limitations and exceptions regarding the rights in the content of the broadcasts should also be applied to the broadcasts. However, Article 10(2) of the non-paper restricted the limitations and exceptions and submitted them to a conditional list. The first version of the non-paper had contained a paragraph referring to the list of exceptions and limitations. Third, the inclusion of technological measures should not be an obstacle to access to information and knowledge, and should not limit the scope of applicability of the exceptions and limitations granted in the context of any possible instrument. Fourth, several issues of great interest to the Group no longer appeared in the text and had been transferred to the Preamble, namely provisions referring to the public interest, including access to information and knowledge, the promotion of cultural diversity and provisions regarding competition and anti-competitive practices. The Delegation hoped that a consensual text could be adopted by the Committee before the date planned for a diplomatic conference to allow speedy progress towards a treaty on the protection of broadcasting organizations.

26. The Delegation of Mexico appreciated that continuity in election of the Chair ensured that the draft treaty would receive due attention. The Delegation referred to Article 8 of the non-paper, for which it expressed support, but sought clarification of what was meant by a "treaty in relation to signals prior to broadcasting".

27. The Delegation of Chile expressed doubts concerning the non-paper, and sought clarification of the concept of "transmission" as it was used, but not defined, in the text. It also sought clarification as to whether the concept of computer networks was intended to include transmissions that took place via Internet protocols, but not by use of the World Wide Web.

28. The Chair noted that several delegations had proposed the inclusion of protection of pre-broadcast signals. The reason was that broadcasting organizations were using point to point or point to multipoint signals to transport content between them and to designated receivers. However, that activity was not strictly defined under the international telecommunications system as broadcasting services, because the signals were not intended for reception by the public. For that reason, such pre-broadcast signals did not fall within the normal protection of broadcasting signals, and could be subject to theft. In some jurisdictions, where broadcasting followed immediately after transmission of the pre-broadcast signal, the pre-broadcast might receive protection as part of the broadcast, but in other jurisdictions and particularly with respect to intellectual property law, such signals constituted a gap in protection for broadcasting organizations, and for that reason they were included as Article 8 in the non-paper and Article 16 in document SCCR/15/2 Rev. Concerning the lack of definition of "transmission", the Chair noted that the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention) used "communication " in Article 11 of the English version and "*transmission*" in the French version for the same purpose. In the Rome Convention, the concept of broadcasting was defined as meaning the transmission by wireless means for public reception of the content transmitted. All the Committee's discussions and delegations' proposals had used "transmission" in the context of the definition of broadcast, and it was broadly described as the technical term to describe the way in which the distance between two points was

overcome by movement of a signal using a transmitter or emission device and a receiving device. The term "transmission" could be defined if delegations so required, and in that case the definition should be generic and technologically neutral. He also referred to the fact that e.g. in the Radio Regulations of the International Telecommunications Union (ITU) the term "transmission" has been used throughout the definitions of that instrument as well as in the other provisions without defining it. Similarly, the term "signal", which referred to the technical phenomenon of transmission, had not yet been defined, but could be. The terms defined until now had been previously explained, as set out in the explanatory notes of earlier working documents, including document SCCR/15/2 Rev. The origin of the concept of computer networks was in the proposal of the United States of America to include webcasting among the objects of protection, where webcasting was defined as a type of activity similar to broadcasting, as its final results, that took place in a computer network. A computer network described any phenomenon including a network and computers that used the Internet protocol or other corresponding operating modes. Although that definition had become well established through the Committee's discussions, it had not yet been tested outside the Committee, and the context of WIPO, and a better definition could yet be found that might include, for example, computer networks that did not use the Internet protocol.

29. The Delegation of Chile referred to Article 13(d) of the Rome Convention that granted broadcasters rights with regard to a communication, such as television, which had an effect on the public. While that could sometimes be interpreted as a transmission, equivalent to public communication, it was understood from the Chair's explanation that the right of communication to the public would be excluded when there was no distance between the broadcaster and the receiver. The question then was whether Article 13(d) gave the broadcaster or cablecaster rights over communication to the public for such use.

30. The Chair affirmed that "communication" in Article 13(d) referred to an act of making the broadcast audible and visible to a public that is present. He furthermore explained that "transmission" was a technologically neutral term referring to all transmissions whether to the public or in private, but "transmission to the public" was a qualified term that described broadcasts or cablecasts intended for reception by the public. Protection under the draft treaty should clearly only be granted to transmissions involving the public, and private home networks and other communication networks would therefore definitely be excluded from protection. Protection should be granted to public transmissions regardless of the distance between the broadcaster and the recipient. For example, sending library contents from a server in the library to users in the same room, on an on-demand interactive basis, was not considered broadcasting, but another kind of transmission, due to the different nature of this making available of content to the members of public. In this case only a short distance is involved between the act of making accessible and the receiving.

31. The Delegation of Egypt stated that the draft treaty was too vague and imprecise in its definition of terms to serve as an international legal instrument. Other delegations had noted that although the draft treaty was based on protection of the signal, and webcasting had been excluded because it was not signal-based, the text did not contain a definition of a "signal". A signal could be clearly defined as an electronic device that carried the broadcast content from the broadcaster to the public. There was a further problem with the concept of transmission because, although Article 2 provided that transmissions were also signals, that was not the case, because signals and broadcasts were not identical, and the broadcast differed from the transmission itself. While the broadcast described the technical perspective, the signal described the operation of transmission to the public. Article 2 was also unclear in that

it referred to retransmission of the signal without looking at the rights in the transmission itself, and therefore needed redrafting.

32. The Chair explained that, while definitions were of great importance for the scope of application of the draft treaty, the non-paper did not contain some of the possible definitions for a number of reasons. Neither the Berne Convention nor the WIPO Copyright Treaty (WCT) contained many definitions, but relied upon the architecture of copyright protection as a framework for those international instruments, including interpretation through scholarly writing and court cases around the world. It was possible to maintain such a system without defining the terms used. From the perspective of related or neighboring rights, the Rome Convention and the WIPO Performances and Phonograms Treaty (WPPT) contained some definitions, although the terms "transmission" and "signal" had been used clearly without definition and without difficulty. The term "signal" had been used in the WPPT to describe the concept of a broadcast for the purpose of determining the rights of the content right holders. In the draft text under consideration, there had been no broad agreement on which terms required definition. Some or parts of the definitions in the Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (the Satellite Convention) might be suitable for the purpose, while others from that text would be outdated. Notice had been taken of the desire of some delegations to define "signal" and "transmission" , while no opposition had been expressed, and the Chair was willing to assist in that exercise by looking at the various existing models. As noted by the Delegation of Egypt, care had to be taken with definitions to ensure that the draft treaty would be clear and precise.

33. The Delegation of Argentina noted that in the first paragraph of the Preamble, the objective of the treaty was described as being to provide effective and uniform international protection, and it should clearly state that its object was to complement but not override national legislation. Greater clarity was required with respect to Articles 3 and 4(1). Article 11, on formalities, should also refer to the Universal Copyright Convention, and clarify that the concept relates also to transmission. Article 7, on the duration of protection of the broadcast, should clarify that it referred to protection of the broadcast and transmission, and deferred transmissions should be protected for a fixed period of time. It was noted that other copyright and related rights treaties had different terms of protection, such as the Rome Convention which had a 20-year protection term.

34. The Chair noted that there was no difficulty in restoring in the draft treaty the term of protection for deferred transmissions. The latest version of the non-paper contained no term of protection, because several delegations had proposed that a treaty could be concluded without a term of protection, particularly where protection was granted mainly to the live signal and duration therefore was of less importance. However, as several delegations had noted, once deferred transmission was included in the treaty, a term of protection should logically be included in the text, and discussions should cover what term should be included, whether 20 or 50 years, and what principle should govern its calculation. The proposal had been made to restore a term of protection in the text, to cover the situation where protection was granted to a broadcast that had been fixed, and to avoid the unacceptable situation that protection was granted for an unlimited period of time.

35. The Delegation of Colombia noted that the non-paper was generally recognized to be a work in progress. It referred to the clear mandate, given by the General Assembly in 2006, to focus on the protection of signals. There were various means to protect the signal, which could include a grant of exclusive rights, and might involve taking a controversial case before

a competent judge. Any effort to update the standards or regulations that broadcasting organizations had to follow needed to take into account the contribution made by the industry. Television, for example, was a transitory and immediate medium, and offered various kinds of information. Content was critical, and had been the subject of a great battle in 1996. It was essential to ensure that content was widely distributed; otherwise the interests of education and culture would not be protected. If the broadcasters were to lose the 20-year term of protection, then performers and producers would lose an important ally in relation to the uses that broadcasting organizations made of protected content and in the protection of their rights. It requested an illustration of how a broadcasting organization would deal with and protect non-copyright content, such as the Olympic Games or the Soccer World Cup. If protection were not exclusively linked to the content, the question was how the broadcasting organizations could appropriately protect their investments in bringing such sporting events to viewers.

36. The Delegation of Australia sought clarification with respect to Article 9, with reference to the notion of rights management information. It asked whether there was a need for the non-paper to elaborate further on the meaning of rights management information, in particular to explain that the term was derived from the WCT and the WPPT where it was further elaborated. It might be necessary to confirm that intention in the text, and to make the necessary adaptation in the non-paper, given that the WCT and the WPPT referred to the use of information with respect to the rights of performers, authors and phonogram producers.

37. The Delegation of Ghana agreed with the statement made by the Delegation of Algeria on behalf of the African Group and sought clarification regarding the relationship between document SCCR/15/2 Rev. and the non-paper dated July 22, 2007. Although the non-paper was the later document, document SCCR/15/2 Rev. seemed to offer the better way forward, because the non-paper raised more questions than answers.

38. The Delegation of Brazil noted, on a general level, that the Chair had been guided by two extremes, the minimum meaningful protection and the maximum protection acceptable to Member States. The Chair had also indicated that there was a need to include exclusive rights, and that an effort had been made to streamline the text to the minimum required of the legal text. The Delegation noted that the text had become very short, but the rights it conferred had become very long, were defined in imprecise terms and represented considerable extensions that were difficult to deal with. The Committee's parameters should be to comply with the mandate from the General Assembly, to finalize a draft basic proposal on a signal-based approach. If that could not be achieved, the Committee should revert to the default document SCCR/15/2 Rev., and take a decision to move towards a diplomatic conference on that basis. The Delegation expressed interest only in fulfilling the mandate from the General Assembly, rather than considering maximum or minimum meaningful protection for different industries or sectors. The non-paper did not represent a signal-based approach, and therefore did not comply with the General Assembly's mandate. On a specific level, great importance was attached to three elements in provisions that had been unduly transferred to the Preamble, and the language of which had been diluted to the point of near irrelevance. Those provisions addressed fundamental issues such as promotion of cultural diversity and the defense of competition, and should be re-included in the non-paper as operative articles. The objective of the draft treaty was to define an international standard of protection for broadcasters' signals and, as had been stated by the Delegation of Argentina, did not imply imposing uniform standards of protection in Member States' jurisdictions. The adjective "uniform" in Article 1 was not included in the agreed parameters for negotiation, and should be deleted. With respect to Article 2, the Delegation maintained the reservations it

had made during the session in January 2007 to the definition of "broadcast" and extended such reservations to the definitions of "broadcasting organizations" and "cablecast". The draft definitions were inconsistent with national legislation in its country, and needed thorough re-examination. A joint reading of Articles 2 and 5 implied that foreign broadcasters would be given greater protection than the protection given to national broadcasters. With respect to Article 3, many doubts persisted regarding the scope and object of the treaty, and clarification of the correct reading of Article 3(4)(i) and (iii) was required. With respect to Article 4, concerning the relation of the draft treaty to other conventions and treaties, strong support was expressed for the re-introduction of language on access to the public domain in paragraph (1) with a view to ensuring that protection under the draft treaty would not affect such access. With respect to Article 6, concerning national treatment, support was expressed for the Berne Convention model to ensure respect for national treatment in the traditional sense. The exclusive rights approach taken in Article 8, if it was the option selected to meet Member State's needs, needed to be balanced by the option of other forms of legal protection, and the Delegation preferred re-inserting its previous version of the relevant text. Article 9, concerning protection of encryption and rights management information, was problematic, as the Delegation had stated in its informal submission on the previous version of the non-paper, and the provision should be deleted. The current language would create obstacles to technological development, access to knowledge, flexibilities, exceptions and access to the public domain. A treaty dealing with protection of signals against signal theft should not venture into areas that currently applied to real intellectual property or copyright. With respect to Article 10 on limitations and exceptions, the verb "may" in Article 10(1) should be replaced by "shall". Article 10(2) attempted to import the Berne Convention three-step test from the field of copyright into the draft treaty, and was not suitable in a signal-based treaty. Finally, Article 14 on provisions on enforcement of rights was inconsistent with Articles 1.1 and 4.5 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement), and should be deleted. Enforcement issues under the TRIPS Agreement were matters to be left to national jurisdictions.

39. The Delegation of El Salvador noted that the Chair had attempted in the non-paper to consolidate the positions of the various countries and recognize inclusive rights to simultaneous transmission through all means, including, *inter alia*, retransmission. It supported technical and objective discussions, based on the non-paper, as well as document SCCR/15/2 Rev., with the understanding that the latter continued to be the basic proposal for any future diplomatic conference. However, the non-paper was accepted on the basis that it could also serve to address many concerns of Member States. The goal of the process was to update the rights of broadcasting organizations, because the Rome Convention was insufficient for that purpose. For that reason, Article 7 should incorporate the provisions of document SCCR/15/2 Rev., and indicate clearly what the exclusive rights were, and what the minimum requirements should be. The rights should be, *inter alia*, the rights of retransmission, communication to the public, making available to the public, simultaneous retransmission and fixation of transmissions. It recognized that the work was not finalized, and that further work was required to consolidate the various positions of Member States to prepare a treaty that updated the rights of broadcasting organizations that met the needs of Member States, their populations and other relevant sectors.

40. The Delegation of India expressed appreciation for the Chair's attempt to incorporate various viewpoints in the non-paper. It recalled, as noted in the introductory note to the non-paper, that the General Assembly had given a clear and specific mandate to the Committee to work towards a treaty on a signal-based approach to protect broadcasting and cablecasting organizations in the traditional sense. The Delegation had consistently agreed

with that approach. It also agreed with the clear identification of the broadcast as the object of protection, and by attempts to define the term "broadcast" to make it clear that it was the signal which was the focus of the discussion. It also noted with approval that some of the post-fixation rights had been dropped from the discussion, as such an approach received the maximum support among the Member States. It was concerned that some issues had been included in the non-paper despite its expressed reservations and submissions, and some provisions were absent despite the mandate of the General Assembly. The mandate directed the SCCR to aim to agree and finalize on a signal-based approach, the specific scope and object of protection, with a view to submitting a revised basic proposal to the diplomatic conference. However, the specific scope of the proposed protection had not been stated positively. The wording of Article 3(4) gave the impression that the scope of the treaty was broad enough to include activities not expressly prohibited, which would result in broadcasting organizations enjoying more benefits than intended by the provisions in the non-paper, and would affect the interests of content creators, as well as access to knowledge by the public at large. Article 3(4)(i) had the potential to cover the right of transmission through computer networks by the organization responsible for the broadcast and cablecast, even without acquiring the Internet rights from the owners of the copyright and related rights. Therefore, there was a need to define the scope of the treaty more clearly and positively by inclusion, in addition to exclusion. Despite general agreement on a signal-based approach, the issue of rights accruing to broadcasters in the case of retransmission and deferred transmission persisted in the text of the non-paper, with a further assertion of the inevitability of such provisions. Such an approach went beyond the mandate given by the General Assembly and caused the Delegation some difficulty. It further noted that, despite a reference to the fact that simulcasting and webcasting were outside the scope of the proposed protection, some simulcasting by broadcasting organizations continued to be covered in the non-paper. There appeared to be a conflict between the stated mandate and the provisions appearing in the text of the non-paper. Discussions should focus on protection only for those aspects of rights which were owned or specifically acquired by broadcasting organizations. Further, a number of issues of vital importance that had been included in the Preamble should be referenced in body of the text. The protection offered to the broadcasting organizations had to be balanced against the interests of other right holders and the obligations of the State to meet its public policy objectives. Finally, the Delegation requested the Chair to open a clause by clause discussion of the non-paper sufficiently early to enable delegations to reach a consensus, particularly in view of the need for consensus to enable progress towards a diplomatic conference in accordance with the mandate of the General Assembly.

41. The Delegation of Mexico expressed the view that the Committee was considering topics one by one without reaching any conclusion in an orderly manner, whereas the purpose of the Special Session was to analyze the non-paper, and to allow delegations to examine the articles in turn in order to devise a working method and reach a structured conclusion.

42. The Chair pointed out that a working program regarding the substance had not yet been established. There were three questions to which there was no response yet, namely the question by the Delegation of Colombia about how broadcasting organizations would be able to secure their position. It had already been demonstrated over the long period of preparation of the instrument that broadcasts rarely did not include some copyrighted elements. For instance, it was very rare to see a sports transmission which did not include commenting speech, graphics, music and other kinds of protected content. Protection now under discussion should be granted on the basis of the investments in the assembling, selection and scheduling of the programs, and it should be independent from the content protection. There was a question by the Delegation of Australia about Article 9 on rights management

information. The same heading had been used in the 1996 Treaties in the context of more elaborated clauses. That provision was a more compressed presentation of the protection of encryption and rights management information. The provisions of the WCT and WPPT in that regard contained more elements. Article 9 of the non-paper had a minimal language so as to make the provision workable and applicable in a meaningful way. The provision contained a small technical error. The points numbered i) and ii) should be numbered on an equal footing with I), so they would be II) and III). Finally, the Delegation of Ghana sought clarification of the status of the non-paper and its relation to document SCCR/15/2 Rev. Document SCCR/15/2 Rev. was for many delegations too complex to become the basis for negotiations and further preparation of a diplomatic conference. Despite several attempts to simplify earlier generations of the document, the Committee had not been able to delete a single alternative, but had stuck to the principle of inclusiveness of proposals. Now, the work had started from another corner by presenting an extremely simplified set of articles and by testing whether the non-paper could become the basic proposal for the diplomatic conference. Regarding the continuation of the work, he pointed out that the plenary would serve as the main forum to consider the outcome of the informal consultations. Those consultations would be open-ended and everyone would have the right to participate in them. He proposed an outline to address the substance of the non-paper in four clusters. One consisted of the objective, scope and object, including the preamble of the non-paper and a reference to document SCCR/15/2 Rev. The second cluster would consist of the provisions found in Articles 7 and 8 and the limitations and exceptions. Some definitions would be divided between those two clusters, so that the first one would include the definitions of broadcasting and cablecasting organizations or cablecast, as they governed the issue of scope and object. The second cluster would include the definitions of retransmission and fixation as they governed the scope of protection. The third cluster would consist of the obligations concerning encryption and rights management information. The fourth cluster would cover the term of protection. He invited the Committee to formulate compromise language that would be sufficient and satisfactory as a working hypothesis, without any need to reach any final conclusions. In the morning of the following day, the floor would be given to the intergovernmental and non-governmental organizations, and then proper work would begin on the content of the instrument, cluster by cluster. He informed the Committee that, due to imperative reasons and for the first time during his many years as Chair of WIPO committees, he would not be able to chair the discussions on that day.

43. The Delegation of Brazil supported the statement, made on behalf of GRULAC, to be constructive and support the Chair in his difficult endeavors. It pointed out that the way the clusters had been selected prejudged the Delegation’s acceptance of the non-paper. Cluster three, for example, was not acceptable to the Delegation. Also, there was nothing about signals, despite the fact that the Committee had to achieve protection on a signal-based approach. The term of protection implied that there was agreement that there should be one. If there were to be rights to deferred retransmission, what did deferred mean, and how long did a deferred retransmission last? The Delegation understood that deferred would not be 20 years. In a previous SCCR meeting, a proposal had been made to examine a right to prohibit, which would be a real defensive right, but not an exclusive right to authorize, as the one included in the latest version of the non-paper. The plan did not seem to allow for alternative solutions, and it made it difficult to discuss alternative approaches to the whole issue.

44. The Chair responded that the division of the work on substance should not be interpreted as prejudging any issues. Delegations were free to propose other formulas than those in the non-paper, whenever suitable and feasible on the basis of document

SCCR/15/2 Rev. The right to prohibit was a model found in that document as an alternative to the exclusive rights. If there were to be rights in deferred transmission, the possible term of protection would be relevant. The definition of signal could also be put on the table.

45. The Delegation of India agreed with the observations made by the Delegation of Brazil to discuss the paper article by article. Additional definitions could be added when necessary. Secondly, regarding procedure, since the informal discussions would be open-ended and followed by discussions in the plenary, the Delegation questioned their utility.

46. The Delegation of Bangladesh proposed that the plenary took a decision on how to proceed. The Group of Asian and Pacific countries felt that it would be better not to divide up the text but rather discuss it article by article.

47. The Chair pointed out that there should be no parallel sessions where different things would be dealt with simultaneously. All the substance should be dealt with in a consecutive way.

48. The Delegation of Bangladesh noted that the Group of Asian and Pacific countries did not prefer parallel meetings because there were small delegations in the Group who would not be able to participate in many of them.

49. The Delegation de El Salvador endorsed the statements of the Delegations of Mexico, India, Brazil and Bangladesh concerning article by article discussions.

50. The Delegation of Venezuela expressed serious reservations with regard to the scope of Articles 3, 5, 7, 8 and 9. With regard to the format of the debate, it echoed the concerns expressed by the Delegations of Brazil, India, Bangladesh and El Salvador and proposed to initiate the article by article discussions.

51. The Chairman recognized the prevailing thoughts on both substance and procedure. However, he recalled that sometimes organizing the discussions in clusters, tackling some easier things first and then more difficult things afterwards, could be better than discussing article by article.

52. The Delegation of South Africa supported the proposals made by other delegations to proceed article by article. It sought clarification whether discussions would be initiated from Article 1 onwards.

53. The Chair confirmed that the first discussions would be on the Preamble and then Article 1. At some instances there could be some jumps in order to address questions in a logical order. The debates in the plenary could be organized in such a way that all the positions and opinions expressed could be logged for analysis and preparation of conclusions. He invited the Vice-Chairs to consult with him on the procedure for the following day.

54. The Vice-Chair of the Committee, Ms. Zhao Xiuling, said that she felt honored to assume the chairing of the meeting. She invited the IGOs and NGOs to speak. Due to time constraints, each organization would have three minutes to deliver its statement.

55. A representative of the Arab States Broadcasting Union (ASBU) said that the document prepared by the Chair could be a good basis for the work, and would help the Committee to get out from the vicious circle in which it had been turning around for a period of

approximately nine years. A treaty that dropped below the minimum level of protection granted by the non-paper would be meaningless and useless.

56. A representative of the German Society for the Protection of Intellectual Property (GRUR) made various remarks about the non-paper. The first remark was on the specific scope and object of protection. The word "mere" was unclear as cable companies that merely transmitted or retransmitted other broadcasting organizations signals, in unchanged way and via cable simultaneously, could not be protected because it concerned the signal of the very broadcasting entity. The second remark was with regard to the protection of broadcasters in Article 7. The words "by any means" in that article should be clarified as to whether it also included transmissions over cable networks, computer networks, and the Internet. Regarding piracy, broadcasting organizations had to be protected against the fixation of their broadcasts. The third remark was with regard to the term of protection. It was evident that broadcasting organizations should also be protected against the deferred retransmission for a given period of time.

57. A representative of the Canadian Cable Telecommunications Association (CCTA) supported the submission made by the Canadian Delegation. He was concerned about the potential impact on consumers if a new layer of rights was granted to broadcasters in addition to the existing rights which already existed for owners of copyright in the programs carried by the broadcast signals. Where that new layer of rights required a second payment for the same programming, the cost would ultimately have to be borne by consumers. With respect to national treatment, the WPPT model, as expressed in Alternative J of the April 20, 2007, non-paper, was the most appropriate option. That model limited the national treatment provisions to the rights and protections specifically provided for in the draft treaty. Member States provided particular forms of protection for domestic broadcasters in national legislation. If that support was outside the scope of the draft treaty, it would not be appropriate to require that similar benefits be extended to foreign broadcasters. Finally, he supported Canada's proposal that the limitations and exceptions provided for in the Rome Convention be provided for in any new treaty, for instance, regarding reproduction for personal use.

58. A representative of the Computer and Communications Industries Association (CCIA) said he represented a broad cross-section of the information and communications technology industries. As previously stated by industry representatives, civil society and the private sector, any protection should utilize a signal-theft approach. Many of the concerns indicated in that joint statement remained as relevant as ever at present times. In addition to his concern about a rights-based approach, he remained concerned about the possible inclusion of Internet retransmission and the risks such protection could pose for network intermediaries. He agreed with the suggestion of several delegations that Article 10 of the non-paper should be amended to state that the Contracting Parties provided for the same kinds of limitations or exceptions with regard to the protection of broadcasting organizations as they provided with regard to copyright and related rights. The revision would be superior to the current language which merely stated that Contracting Parties might provide such limitations and exceptions. Ensuring harmony between any broadcast protection and the protection of rights and underlying content would promote non-infringing access to, and use of, broadcasts without undermining the goal of protection. Nevertheless, he remained concerned about the provisions on technological protection measures. In his experience, technological protection measures had weakened important limitations and exceptions, leaving industry and end-users no recourse except expensive and uncertain litigation. Such protection measures required additional study before being included in another multilateral instrument. To proceed without

resolving those concerns could inadvertently burden the development of innovative communications technologies.

59. A representative of the Ibero-Latin-American Federation of Performers (FILAIE) said that his Organization represented 23 performers' organizations located in 17 different countries, basically in Europe and Central and South America. It was still inconceivable that protection be granted to broadcasting organizations when the primary rightsholders, such as performers, were still open to abuse, because they were not given protection in the audiovisual sphere. Moreover, the objective conditions necessary to go into a treaty for broadcasters were not present. Any talk about protecting a signal against piracy led to the question whether WIPO was the right forum to deal with it. Instead, it should be an organization dealing with the protection of broadcasting and outer space.

60. A representative of the International Association of Broadcasting (IAB) remarked that the Rome Convention established a series of rights which had been omitted from the appropriate paragraph in the informal document. Article 13 of that Convention contained the right of fixation. There were no convincing reasons for such a reduction in the granting of exclusive rights. The mandate of the General Assembly had stated that the object of the protection should be the signal. There was no reason for a deletion of the right to authorize the fixation of the signal and the reproduction of the fixation of the signal, granted already by the Rome Convention. That was a contradiction which ran counter to the effective protection of the signal. The protection of the rights of broadcasting organizations in the non-paper would be seriously diminished in comparison to the Rome Convention. He called for the granting of the exclusive rights included in Articles 9 to 15 of document SCCR/15/2 Rev., instead of taking an unjustified step backwards with respect to the level of protection accepted by numerous countries in the Rome Convention.

61. A representative of the International Affiliation of Writers Guild (IAWG) pointed out that it was writers from all over the world who originated the creative material which was the basis for much broadcasting. Sometimes writers retained their copyrights, in other cases copyright was assigned to producers or, indeed, to broadcasting organizations, but even in cases where copyright was assigned it was a standard practice for the writer to hold rights to royalties or individual payments, based on the reuse of his material. Therefore, when a broadcast material was pirated, it amounted to an act of theft against the writer. IAWG welcomed the prospect of a treaty that could enable and indeed encourage broadcasting organizations energetically and effectively to pursue and defeat piracy. He emphasized that, first, the proposed treaty should in no way compromise or detract from the existing rights of writers and other rightsholders in the material form or substance of the broadcast. Appropriate wording in Article 3(3) and Article 4 could help achieve that goal. Second, the non-paper indicated that the question of eligibility to be party to the treaty should be picked up from document SCCR/15/2 Rev., but it was indecisive about which alternative should be used. He strongly believed that Alternatives AA and AAA, from Article 27 in SCCR/15/2 Rev. should both be adopted, as they would require Contracting States to be party to the Rome Convention and to the WPPT. Finally, there was a considerable lack of clarity or consensus about the way ahead. Progress was undeniable, but he wondered if the Committee had yet achieved the necessary basis for a successful diplomatic conference. Much progress had been achieved only because of the removal of the issue of webcasting from the treaty under discussion. That was necessary, but it was also vital that the Committee tackled the webcasting issue as a matter of urgency.

62. A representative of the Association of Commercial Television (ACT) said that his member companies were active in 34 countries where they operated more than 371 free-to-air and pay TV channels, distributed 540 channels and 170 new media services. He queried whether the deliberations of the Committee would not lack something if there were no broadcasters to contribute to its considerations. A statement made by a delegation the previous day seemed to challenge and to call into question each and every element of the Chair's non-paper. From ACT's standpoint, the non-paper provided indispensable building blocks for a meaningful treaty to fight free-riding by giving broadcasters enforceable rights and, at the same time, enable broadcasters to satisfy the demands of citizens for legitimate services over the Internet. WIPO had an important function to fulfill as a norm-setting body. There was a general recognition of the need to upgrade the rights of broadcasters. The Chairman's non-paper as it stood represented a genuine and worthwhile response.

63. A representative of IP Justice pointed out that, after ten years of discussion, even the very basic question about the purpose of such a treaty seemed to be unclear. The reason usually given to protect broadcasters was that their signals were pirated especially by using deferred transmission over the Internet. The most used example was sport broadcasts, but the Chair had clearly stated that one could hardly find any sport broadcast that was not in some way copyrighted. Therefore, broadcasters already had all means to fight against piracy at national and international level, even against deferred unauthorized transmissions over the Internet. The same applied where broadcasters were the producers of the content. The problem of piracy should be solved with the enforcement of rights, not with a new treaty. Representatives of broadcasting organizations had stated that if the treaty would not be based on some elementary and absolutely necessary rights, the process should be abandoned. That clearly meant a minimum of intellectual property-like rights. Broadcasting industries were prospering and expanding without those "elementary and absolutely necessary rights". The only way to comply with the General Assembly's mandate was a draft treaty narrowed down to a real signal-theft approach, meaning that no exclusive right was granted therein. If broadcasters did not want an instrument without exclusive rights, he wondered if perhaps it would be better to have no treaty at all.

64. A representative of the International Confederation of Authors and Composers Societies (CISAC), speaking also on behalf of the International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), remarked that it was clear that the entertainment industry was faced with challenges of increased access to media through a wide range of on-line services and with the challenge of ubiquitous and unlawful exploitation of its works. Anybody who made a critical contribution to the entertainment chain could see that her contribution could be seriously undermined by freeloaders. If creators had not been given the modern international framework of rights more than ten years ago, it would have not been possible to meet the challenges of new technologies. Broadcasters made a valuable social, cultural and economic contribution to society, so they should be provided with adequate and harmonized protection through the current process. The non-paper of April 20, 2007, could be used as the basis for concluding a treaty. Broadcasters' rights should not be watered down even further by narrowing the substantive rights. He urged delegates to make a great leap of faith which recognized that it was only equitable for broadcasters to be given the rights that they deserved; which recognized that society had nothing to lose and everything to gain by having a diplomatic conference sooner rather than later; and which recognized how critical it was for WIPO to demonstrate that it was still able to effectively exercise its all important norm-making functions.

65. A representative of the International Federation of Actors (FIA) was of the opinion that the protection of audiovisual performances should have come first in the list of priorities of Member States in order to wrap up the unfinished business before taking up a new challenge. The work of performers was increasingly exploited without authorization or compensation in the global digital environment, even by broadcasting organizations. However, FIA recognized that progress had to be made to achieve a meaningful result for broadcasting organizations that stroke a right and fair balance with the interest of other right owners, including performers. The non-paper tabled by the Chair was a step in the right direction as it continued to focus on signal protection and had abandoned the previous trend towards granting broadcasting organizations intellectual property rights in the commercial exploitation of contents. He questioned why the definition of the "signal" had been deleted from the non-paper. Also, he remarked that, under Article 3(4), the text should make clear that retransmitting third parties could not claim protection under the treaty, whether they were involved in simultaneous or in deferred retransmissions. Under the current formulation, Article 3 combined with Article 2 on definitions would only exclude third parties involved in simultaneous retransmission. Article 7 should be drafted in the form of the right to prohibit, at least when it came to the deferred transmission of the original content-carrying signal which would give broadcasting organizations the protection they needed and would not create a precedent regarding IP protection on content. Finally, he urged Member States to ensure that Article 2 also included the definition of deferred transmission. That term, which was to be found under Article 7, was new to the international treaty making. Moreover, it was unclear from which moment a transmission could be considered to be deferred or new, or rather some form of communication to the public. The definition of a rebroadcast had to be consistent with previous international treaties.

66. A representative of the International Federation of Musicians (FIM) supported an instrument enabling broadcasting organizations to effectively combat piracy of their signals. A signal-based approach to the protection would take the Committee towards that objective. He expressed a deep concern regarding the conclusion adopted at the fifteenth session of the Committee on the definition of the term "signal" and called for a clarification of the notion of "broadcasting". The non-paper only had a definition of the term "broadcast". Like many delegations, he was convinced that the adoption of a definition of "signal" was an indispensable prerequisite for a signal-based approach to protection against signal theft. He supported the request of a number of NGOs concerning the need to clarify and specify the notion of "deferred transmission." In addition, implementing another level of protection of broadcasting organizations without updating the protection of the rights in the content would have a potentially damaging effect on the latter. He therefore reiterated the request that adhesion to the treaty should be open to countries, party to the WCT and the WPPT. He recalled that in important market sectors, such as the United States of America and China, broadcasting organizations did not pay producers of content. New rights should be harmonized in national legislations. He suggested considering what was being carried out at the moment in the United States of America.

67. A representative of the International Federation of Journalists (FIJ) supported the signal-based approach adopted by the Chair's non-paper of April 20, 2007, which granted broadcasting organizations rights that went beyond the simple protection of the signal. Certain amendments were, however, necessary in order to ensure balance between the rights of broadcasters and other owners of rights. The right to prohibit would be sufficient, rather than an exclusive right. Accession to the future treaty should be reserved for Parties to the WCT and WPPT. He expressed reservations with regard to technological measures of

protection. They could help to combat signal theft, but they could also prevent other right holders from the exercise of their rights.

68. A representative of the Independent Film and Television Alliance (IFTA) supported the principle of a signal-based approach to protect the interest of organizations engaged in traditional broadcasting, in particular to help them join other right holders in the fight against piracy. However, any treaty should respect and not interfere with obligations and protection already provided at the international level for content right holders. The content providers who licensed programs needed assurance that the protection of the broadcast signal would not let their own critical financial commitment play a role secondary to that of the broadcasters' investment in infrastructure. Any new provision suggested to protect the live signal should supplement, and not negate, the commercial and contractual rights in the content. Despite previous SCCR meetings and two special sessions, there was not sufficient clarity yet. The impact of newly formulated definitions had to be both understood and confirmed, including, but not limited to, signal, broadcast, broadcasting, cablecasting, retransmission and even the word traditional when referring to broadcast. Simulcasting could not be assumed, least of all when external providers retained such rights and the choice whether or not to negotiate its inclusion. It was in the hands of the delegates to determine whether a level of consensus could be achieved. If not, he suggested postponing a diplomatic conference and returning to the process only if and when support for a substantial treaty could be ascertained. The SCCR had excluded a linkage with so-called Internet activities. He suggested that WIPO got involved in an information gathering program, to educate rather than legislate, to allow the intellectual property community to consider practical issues on the distribution system and how best to justify necessary production investment which relied on the knowledge of secure delivery systems and fair payment arrangements being available to all entitled parties. A considerable part of such work could include the creation or modification of the definitions for traditional and emerging markets. All of those were critical in the provision of required access to knowledge, education and entertainment for consumers.

69. A representative of the Canadian Radio, Television and Telecommunications Commission (CRTC) recalled that the protection of broadcasters had been discussed for a decade, and the WIPO General Assembly 2006 finally had foreseen a diplomatic conference in 2007. With the technological advancement of transmission systems, it was the Committee's duty and obligation to reach consensus on a new broadcasters' treaty, based on the non-paper. Pirated images and sound were available in TV and on YouTube everyday. If the current opportunity was missed, many broadcasters in the world would see the end of their days. The collapse of broadcasters at large would mean the loss of important tools for obtaining information and enjoying entertainment, sports, drama, music, and movies, as well as content in public domain.

70. A representative of the International Music Managers Forum (IMMF) agreed that broadcasters needed to be able to prevent piracy through signal protection provisions. The General Assembly had concluded that the treaty under discussion should be based on signal protection. Signal-based protection clearly meant no exclusive rights. Broadcasters had stated that if the treaty was not based on some elementary rights, it should be abandoned. If the treaty was abandoned or put on hold for five years, and then revisited, it would not result in a disaster. However, if, with the lack of consensus that currently existed, the Committee moved forward to a diplomatic conference and then failed, as many believed was quite likely, that would indeed be a disaster for WIPO and the SCCR. He recalled the diplomatic conference on audiovisual performances in that respect. The reform of collective management; the harmonization of limitations and exceptions; the resolution of the

audiovisual dilemma; the provision of a public performance right in sound recordings in the United States of America and progress on a new compensation structure for copyright stakeholders in the present anarchy on the Internet, were all issues that the Committee should be constructively addressing. Valuable time had been wasted over an unnecessary broadcasting treaty while there was so much important work to do. He suggested postponing any further discussions for five years and then revisiting the issue of broadcasters' rights in the light of future developments.

71. A representative of International Federation of the Phonographic Industry (IFPI) said that, after ten years of debate on the broadcasters' rights issue, there was a certain sense of circularity in the discussions. Those who invested in new creations and brought them to the public should have the legal tools to get remunerated for doing so. In the United States of America, there was a call for a right of compensation for the broadcasting of phonograms. Broadcasters should pay for the use of that content. Also, a workable procedure had to be clearly set up so as to move forward and make progress. The single comprehensible text prepared by the Chair, with certain improvements, could serve as a good basis, as suggested by the writers' groups and by FIM and FILAIE. Moreover, whether the signal-based approach was obtained through the grant of an exclusive right or through some other means, the real question should be the substance, in other words, the scope of the right, including whether there should be any delineation of the right and its exceptions. Most importantly, existing long-established copyright fundamentals should not be disturbed by the new treaty, as improvements, and not damage, to the international copyright system were needed. While there were many important goals that had been specified during the discussions, including the public interest, competition and cultural diversity, they could not simply undermine specific IP goals. The three-step test had to be fundamentally preserved. That test had been working well over many years and had provided flexibilities for countries within sensible limits in order to pursue their own national policies. The same applied to the technological protection measures and rights management information, as contained in the WCT and WPPT, which reflected a very powerful consensus and balance among interests. She urged delegates to make a choice and not continue discussions indefinitely. The choice was either to work towards reasonable compromise solutions on a particular issue, without seeking either to disturb the conclusions in prior treaties or to accomplish other goals that might be better addressed in other contexts, or, on the other hand, to conclude that the time was not right for such compromise and that it was simply not possible to proceed to a diplomatic conference.

72. A representative of the International Video Federation (IVF) supported a treaty that created fair protection for broadcasters in line with established international copyright norms, including the WCT and WPPT. That should ensure that the consensus of the Member States of WIPO would be repeated in the complex world of broadcasting. He welcomed the Chair's attempt through the non-paper of April 20, 2007, to bridge the gaps among various positions. Broadcasters already enjoyed a significant level of balanced protection in a majority of WIPO Member States and the world still turned. That protect ion had coincided with the development of strong audiovisual sectors in various countries. The role of the diplomatic conference and the adoption of a balanced treaty should not be stymied by cynical efforts to undermine copyright protection at the international level. The Committee should move away from the rhetoric and recognize that the ability of a broadcaster to prevent retransmission of his signals by any means was in the interest of all right holders. The alternative of no protection called into question the entire exercise. Regarding technological measures, the way forward should be based on consensus already achieved in existing international treaties. Regarding exceptions and limitations, he supported an approach coherent with the

international *acquis* that the three-step test provided the necessary guidance and consistency at international level.

73. A representative of the National Association of Commercial Broadcasters in Japan (NAB-Japan), recalled that the 1997 symposium on broadcasting, co-hosted by WIPO and the Government of the Philippines, had declared the urgent need to establish a broadcasters' treaty. The initial purpose was to establish a new treaty that would give sufficient tools to broadcasters to cope with the age of digitalization, especially the new technologies to which broadcasters were already exposed, such as signal theft on the Internet, where many TV programs were posted on numerous video-sharing websites without any authorization. Broadcasters needed a right of making available so as to stop that illegal activity. If only a right of retransmission was given, broadcasters would have to bear the burden of proof that the transmission had actually taken place, which was an extremely difficult task. He also urged the Committee to grant the rights of fixation and reproduction. The importance of those rights was evident in the digital age, and they would affect in no way private use of TV programs. Finally, he questioned whether delegations were ready to afford to lose the momentum to reach an agreement after more than ten years of negotiations.

74. A representative of the North American Broadcasting Association (NABA) pointed out that through the last decade of discussions, the Committee had recognized and accepted that some new protection for broadcasters had to be granted, even webcasting and simulcasting of broadcast signals. The Chair's latest non-paper was clearly a minimalist proposal which just included the most essential elements for broadcasters. Article 7 proposed to grant a right to authorize retransmission of broadcasts to the public of fixed broadcasts by any means. That was a key right for signal protection which was fully supported by NABA as an essential element of a meaningful treaty. The inclusion of "by any means" was of the utmost importance as new technologies allowed retransmission in new ways that posed great risks for broadcasters, such as P2P streaming of broadcast or cablecast signals over the Internet. With respect to the protection of deferred transmissions, it had to be understood that the length of the delay in the transmission did not diminish the harm to broadcasters of unauthorized transmissions. The failure to grant such minimum protection would create a loophole enabling mass piracy and free-riding of broadcast signals. She also supported the protection of technological protection measures. However, the wording of the non-paper might not cover other technologies which were not encryption-based. Instead, she proposed to use a language similar to that in the WCT and WPPT. The non-paper was not perfect but still a meaningful treaty proposal. She urged the Committee to endorse it as a basis for negotiations of a final broadcasting treaty at a diplomatic conference later in the year.

75. A representative of Public Knowledge (PK) expressed his reservations about the current non-paper. IP rights were not a necessary minimum for protecting broadcasts. A true signal-based treaty could protect broadcasters against intentional misappropriation without creating overlapping IP rights. In that respect, he recalled the mandate from the General Assembly to take a signal-based approach. A rights-based treaty would create serious liability risks for individual users, intermediaries and other right holders. The existing copyright laws and international agreements already prohibited the infringement of copyright on video-sharing sites, so a signal-based treaty would complement that regime without interfering with it. He also expressed his concerns about how the non-paper could affect the public domain. Granting broadcasting organizations a right to prohibit distribution of content would hamper the access to knowledge and information. He also referred to the scope of technological protection measures in the non-paper. The provisions on encryption prohibited not just the use of devices to misappropriate broadcast signals but all devices capable of

decrypting an encrypted broadcast. That provision was over-broad and risked to prohibit devices and systems used for substantial non-infringing uses, simply based on their speculative capability to cause harm. The said provision had to be redesigned to prohibit only the decryption or removal of rights management information where the intent was to misappropriate the signal. That could be done by requiring a standard of intention through an exception to Article 9. Unless those crucial issues were addressed, the treaty would not properly reflect the balance among various right holders and the public interest.

76. A representative of the European Federation of European Film Producers Collecting Societies (EUROCOPYA) supported the non-paper submitted by the Chair and founded on a signal-based approach. Broadcasting organizations exploited their transmissions through an increasing number of platforms: cable, IP TV, Internet, satellite platforms and mobile telephony, among others. More than ever, signals needed *ad hoc* international protection. Clearly, the protection of a signal contributed to protect the content. It was needless to recall the value of the content and the need to remunerate each act of public exploitation. The signal-based approach permitted to reinforce the fight against piracy without granting excessive rights to the broadcasting organizations to the detriment of other content right holders. The current debate that had taken more than ten years should not be endless.

77. A representative of the European Broadcasting Union (EBU) said that ten years ago the declared intention of the Committee had been to raise the protection level for broadcasters, to bring it in line with what had just been done for the other protected parties under their own conventions. At the moment, broadcasters were not only terrestrial transmitters, as was the situation regulated in the Rome Convention, but also transmitters via satellite, cable, on demand or by streaming or simulcasting over the Internet, mobile telephony, television and so forth. At the same time, the tools which pirates used had multiplied since the Rome Convention. Digital recording equipment made it very easy to pirate any broadcast signal on whatever platform, and even to make it available on the Internet. The Chair's non-paper was the absolute minimum that broadcasters could possibly accept as a basis for a diplomatic conference. Without that, which would in fact amount to a "Rome minus" protection, European broadcasters would certainly have no further interest in the current exercise.

78. A representative of the Third World Network (TWN) pointed out that in spite of more than nine years of deliberations on a treaty for the protection of broadcasting organizations, the achievement was very little. Delegations were still struggling to work out the objective of the treaty, and to create a new set of IP rights for broadcasting and cablecasting organizations. Many broadcasting industries in developed and developing countries had flourished relying simply on national regulatory frameworks and laws. The rationale for creating a new set of exclusive rights for broadcasters made little sense. Furthermore, granting exclusive rights to broadcasting organizations, particularly over deferred transmission of fixed broadcasts by any means, including transmissions over the Internet and over new media, was clearly beyond a signal-based approach. Free-trade agreements and economic partnership agreements, particularly between developed and developing countries, required the latter to ratify the WIPO Treaties, which mean t that the adoption of those norms was hardly voluntary for developing countries. Developing countries had to ensure that norm-setting activities did not affect their development prospects or their policy space in any way. He supported the broad provisions on limitations and exceptions, the deletion of technological protection measures, and the inclusion in the operative paragraphs of general public interest clauses, provisions on the protection and promotion of cultural diversity and on the defense of competition. It was time to take a step back to engage into independent and objective studies and assessments before embarking almost blindly on norm-setting activities. Finally, he expressed his

disappointment that, while the Chair had consulted the proponents of the treaty prior to preparing the non-paper, he had not consulted other stakeholders that would be affected by the treaty. That action had, unsurprisingly, resulted in an unbalanced non-paper.

79. A representative of the Electronic Frontier Foundation (EFF) pointed out that, despite the General Assembly's clear mandate to the SCCR, the Chair's non-paper was not signal-based but was instead premised on the creation of rights that applied after fixation of signals, rather than measures against signal theft. The public interest and innovation concerns, as well as the protection of broadcasters' legitimate interests could be addressed by a treaty that specifically focused on the intentional signal theft, rather than creating broad retransmission and post-fixation rights. Since the treaty was not limited to real signal protection, it threatened to restrict the public access to knowledge and consumers' existing rights under national copyright law. The inclusion of legally enforced technological protection measures in Article 9 raised also serious concerns about the public interest in innovation policies. It was likely to override national exceptions and limitations that would otherwise permit consumers, libraries and students to access public domain material and make non-infringing use of such transmitted works. Article 9 included common devices capable of decrypting broadcasts for lawful uses. The combination of technological measures with the proposed retransmission right allowed broadcasters and cablecasters to control the market of transmission and receiving devices, such as digital video recording devices. The inclusion of the words "to the public" in Article 7 would not stop the treaty from encroaching upon consumers' private uses. The broad scope of the proposed retransmission right underlined the need for exceptions and limitations to protect the public interest. The treaty should include mandatory exceptions, at least equivalent in scope to those in the Rome Convention and the TRIPS Agreement, including a non-exhaustive and enumerated list of exceptions related to freedom of expression and the ability to create appropriate new exceptions. The three-step test should not be a constraint for that possibility given to Member States. Those were fundamental issues that should be resolved before moving to a diplomatic conference. She urged Member States to carefully consider the impact of an exclusive rights treaty on consumers' interests, citizen broadcasting on the Internet, competition and innovation and not just protection of broadcasters and cablecasters.

80. A representative of Knowledge Ecology International (KEI) thanked the Committee for accepting its accreditation. The most recent non-paper represented a rejection of what the General Assembly had requested last year. There was great support for focusing exclusively on piracy, particularly if the discussions did not involve granting economic rights. The business models and technologies were evolving very fast. However, broadcasters kept saying that the treaty should follow the lines of the Rome Convention, adopted in 1961. The current non-paper eliminated the good limitation and exception language of the earlier draft. In a very restrictive provision, limitations and exceptions needed to meet the three-step test, which was more restrictive than TRIPS, the Rome Convention and the Satellite Convention. The latter was only three pages long and dealt with the same subject matter. It contained a good discrimination between signal and content. It could be useful to distribute the text of that Convention to delegations in order to examine a guideline for protection that did not harm the rights of the copyright owners and contained a balanced treatment of limitations. Limitations and exceptions were not subject to the three-step test. The Satellite Convention contained special provisions for developing countries relating to teaching and resulted in a better protection for consumers and a satisfactory international instrument from the viewpoint of access to knowledge.

81. A representative of the Asia-Pacific Broadcasting Union (ABU) stressed that for the past ten years the documents prepared by the WIPO Secretariat had evolved in a commendable effort to consolidate various positions. The debates under an original catalogue of proposed broadcasters' rights led to documents were those rights appeared diluted. Considering the status of negotiations, ABU had scaled back its ambitions on the treaty. It believed that while it was desirable to include the rights of making available and distribution in the draft treaty, the Chair's non-paper provided a constructive basis to proceed to a diplomatic conference. However, ABU's firm position was that if the exclusive rights of retransmission by any means were narrowed down or reduced to another form of protection, there would be no point in proceeding to a diplomatic conference. There seemed to be a suggestion that while the traditional broadcasters' broadcast should be protected when a pirate took it from the air, it should not be protected when the same broadcast by the same traditional broadcaster was taken from other platforms. That suggestion turned away from reality, as piracy of broadcasts should be prevented under any of its many forms. WIPO Member States should heed the call of broadcasters to be granted protection, especially when such protection meant the survival of many small broadcasting organizations in the Asia and Pacific region.

82. A representative from the Yale Information Society Project (ISP) brought the attention of the Committee to a comparative study undertaken by that institution concerning national regulations of the television broadcast industry. The study was based on selected countries that represented different regulatory and revenue models of operation and economic conditions. Telecommunication regulations were the subject of specialized domestic agencies at national level and of international agencies such as the ITU. New intellectual property rights of broadcasters could not be considered in isolation from the context of the greater regulatory and revenue models of individual countries. The broader the rights adopted in the treaty, the harder it would be to harmonize those rights with the domestic regulatory framework. Moreover, due to the extensively regulated nature of telecommunication industries, new rights and major enforcement could be incompatible with other parts of the regulated legal structure and the domestic needs of individual countries. Such communication regulations were centered on two primary chapters. The first to ensure a level playing field and the second to promote the wider possible dissemination of information and access to knowledge via telecommunication network. In order to maintain that delicate balance, exceptions and limitations played an essential role in minimizing points of conflict.

83. A representative of the International Federation of Library Associations and Institutions (IFLA) supported two possible legal mechanisms found in the non-paper, namely public interest clauses and exceptions and limitations. Because of the importance of public interest clauses to libraries IFLA supported Brazil's call for their inclusion as operative articles in line with the Revised Draft Basic Proposal in document SCCR/15/2 Rev. Secondly, as the non-paper was based on an exclusive rights model, there was a need for a list of exceptions and limitations for public interest purposes, including for people with disabilities, education and research and libraries and archives. The protection of encryption and rights management information in Article 9 gave rise to the question how beneficiaries of limitations could avail themselves of an exception, when the content was subject to a technological protection measure (TPM), which was under legal protection. Computer specialists responsible for long term digital preservation in libraries had expressed concern that even if libraries got permission to circumvent TPMs, the fast development of encryption technologies could soon make such practice impossible. Article 9 should therefore be deleted from the non-paper.

84. A representative from the International Federation of Associations of Film Distributors (FIAD) stated that the work accomplished over the last ten years by WIPO was a considerable input on the legal aspects of interest to the creative and communications industries. The non-paper summarized what had been discussed and achieved and was a good basis towards the convening of a diplomatic conference. Piracy was an absolute scourge which undermined the industry through the illegal exploitation of works. A signal protection based approach should be followed in accordance with what had been decided by the General Assembly. Consequently, broadcasters should be accorded the legal protection which their activity made necessary without going beyond the rights of the parties concerned. Finally, and concerning the issue of exceptions, the guideline should be what had already been done in WIPO, which would lead to the adoption of a treaty balancing the protection given to right holders and certain other general interests.

85. A representative from the International Federation of Film Producers Associations (FIAPF) reiterated its support, expressed over the last ten years, to provide an additional level of protection against signal piracy. The draft non-paper was a step in the right direction. However, three points should be taken into account. First, the objective of the treaty should be the protection of the signal. Second, regarding the issue of limitations and exceptions, Article 10 should be in conformity with the existing international treaties and notably with the three-step test, which had proved to be effective in giving Member States enough flexibility to adapt to local needs and situations. Third, technological protection measures were indispensable for the legal supply of audiovisual creations on-line. The balanced approach of WPPT and WCT on that issue should be retained.

86. A representative from the European Digital Rights (EDRi) considered the current non-paper unacceptable. The General Assembly had given a mandate to the SCCR to prepare a treaty with a signal-based approach. Unfortunately, there seemed to be no consensus on what was actually meant by that expression. EDRi proposed the following simple test: the treaty was truly signal-based if, and only if, there was absolutely no need to include a clause on the term of protection. Unfortunately, negotiations had started many years ago in the wrong framework. Treaties that created pure investment protection without the tiniest requirement for creativity should not be part of copyright, and even less should they start integrating the protection for patents and trademarks in the copyright system.

87. A representative of the National Association of Broadcasters (NAB) stated that the Committee had been deliberating for years on a treaty to update the international rights of the broadcasters and their signals. Those deliberations had been thorough and exhaustive. The Committee had had 18 sets of negotiations. Symposia on broadcasting had been held in several venues, where broadcasters provided examples of piracy and other expropriation of the signals. Regional consultations were held in 2005 in Africa, Asia, Eastern Europe, Western Europe and Latin America. Attended by representatives of over 85 countries, those consultations focused on some of the final points of the treaty. Since 1988, at least 18 countries had submitted proposals in the form of treaty language that included exclusive rights. Those proposals had come from countries large and small in four continents. At the beginning of the process, broadcasters were excited and enthusiastic about participating in a WIPO process designed to modernize and harmonize signal rights at an international level. The paradigm for a modernized broadcasters' treaty should be the WPPT, which updated the rights of other Rome Convention beneficiaries. Under the latest proposals broadcasters would not enjoy exclusive rights and would not be provided with protection regarding technological measures. A long list of limitations and exceptions would devour whatever shambles remained from the carnage imposed by an extremely limited protection. Some of the

proposals were coached in rhetoric claiming the search for balance and fairness and the need to ensure access to knowledge in information, the promotion of technological development and innovation. Under that rhetoric, access to public domain materials and the viability of fair use of content in broadcast depended on avoiding the creation of new and troublesome rights that would conflict with the owners of the broadcast content. However, that parade of horrible results was purely hypothetical. The real world experience of an entire continent, such as Europe, was based on a regime of exclusive rights far more extensive than those in the current non-paper. That regime protected TPMs and retransmission of broadcast signals on the Internet. None of the horrible consequences mentioned had been felt in Europe. The need to modernize protection for broadcasters and their signals was great. That need covered a minimum set of exclusive rights, including simultaneous and deferred retransmission, fixation and making available and the protection regarding technological protection measures.

88. A representative from the Union of National Radio and Television Organizations of Africa (URTNA) stressed the importance of the work done by WIPO on the protection of broadcasters and the need to conclude a process initiated after the adoption of the WCT and the WPPT in 1996. As the objective of the process was to update the Rome Convention, it would not be appropriate to go below the minimum provisions which were offered by that Convention. African broadcasters urged the Committee to be assured the exclusive right of authorizing the retransmission of their programs and also rights of fixation and reproduction. It was necessary to protect the intellectual capital which broadcasters invested in their programs in order to have a meaningful right to information. Moreover, broadcasting was instrumental for the protection of cultural diversity. African culture needed to be broadcast not only throughout Africa but known more widely in the rest of the world as well.

89. The Delegation of the United States of America stated that the recent non-papers were a good basis for discussions, and that there was much work to be done to reach consensus on a revised basic proposal for a diplomatic conference. The current Draft Basic Proposal in document SCCR/15/2 Rev. should be substantially narrowed to meet the criteria set forth in the decision of the General Assembly. It would not be appropriate to move forward to a diplomatic conference with such an unstable document. At a minimum, a draft basic proposal should include consensus on key provisions that provided broadcasters with protection against signal piracy, while not undermining the right of the underlying content holders or the public interest. As the General Assembly had directed, agreement should be found on the objectives, the specific scope and object of protection in order to proceed to a diplomatic conference. Certain provisions related to competition, cultural diversity and public interest, currently found in document SCCR/15/2 Rev., could undermine any protection provided under the treaty. While the non-papers' approach to the competition, cultural diversity and public interest issues would be acceptable, any revisions to language on those issues similar to the language that appeared in document SCCR/15/2 Rev. would be unacceptable. Unless agreement was reached on those issues, the General Assembly's mandate would not be satisfied, and it would become impossible to proceed to a diplomatic conference. Throughout the process, the Government of its country had sought to achieve a treaty that was reasonably up-to-date, given the state of technology. Fundamental to that objective was a treaty that included protection for broadcasters against the unauthorized simultaneous retransmission of their signals over the Internet. A major threat to broadcasters arose when someone placed their signals on the Internet without permission. There would be no point in concluding a treaty that did not address that threat. Moreover, provisions on technological protection measures should retain the language used in the WCT and the WPPT. The rights granted to broadcasters under the treaty should in no way interfere with or negate contracts that had been entered into with a content owner or the program producer. Since the beginning of the

discussions in WIPO, the Delegation had scaled back its ambitions as reflected by the withdrawal of its own proposal on a technologically neutral protection for netcasting organizations. The same flexibility was required of all Member States in order to achieve agreement.

90. The Delegation of Mexico emphasized the great amount of work undertaken over the years to culminate in a diplomatic conference. It expressed concern that other delegations wanted to start all over again, throwing away everything that had been achieved. The Delegation endorsed the comments made by African broadcasters on the cultural and social effects of broadcasting.

91. The Delegation of Indonesia associated itself with the Bangladesh statement which was delivered on behalf of the Asian Group. Indonesia was looking forward to having a process towards a broadcasting treaty focusing on the protection against signal piracy, while ensuring that it did not impede the free flow of information as well as public policies of Member States.

92. The Delegation of Japan indicated that after discussing the updating of the Rome Convention for a decade it was now time to finally agreeing to move forward to a diplomatic conference. Under the assumption that the new treaty would be an update of the Rome Convention, it was necessary to build upon the framework of that Convention, which meant granting exclusive rights. A few delegations had the opinion that a signal-based approach should not entail exclusive rights. However, there was no consensus on that issue, and exclusive rights fell within the mandate of the meeting. Articles 2, 3 and 4 of document SCCR/15/2 Rev. should be removed from the operative provisions and amended in an appropriate wording to be inserted in the Preamble. In doing so it would be necessary to discuss the best balance between the rights protected and public policy considerations.

93. The Delegation of the European Community, speaking also on behalf of its member States, stated that it would be appropriate to use the non-paper as a starting point of deliberations and favored an article by article discussion thereof. The principal mandate for the SCCR was to discuss how the signal-based approach should be implemented in practice. As stated by the Delegation of Japan, the signal-based approach covered a wide variety of different legal instruments. Especially regarding the formulations of Articles 2 and 7, it appeared necessary to debate how to translate the signal-based approach into operative language, agreeable to all. The Delegation remained flexible on the issue and endorsed a constructive debate on the Chair's second non-paper, notably focusing on the Articles mentioned. It was necessary to grant broadcasting organizations a legal position, which was enforceable in all the jurisdictions where the treaty would apply. The principal aim of such a treaty would be international harmonization of effective remedies that such broadcasting organizations would enjoy against signal piracy and subsequent transmissions of their signal on a variety of platforms which were in a competitive relationship with those used by the broadcasting organization itself. A certain legal position in the form of rights needed to be granted to the broadcasting organizations, in order that they could exercise those rights in a uniform manner throughout the different jurisdictions in which piracy occurred. As stated by the Delegation of Brazil, it would be advisable to start the discussion with the main operative text of the treaty and then move on to the Preamble. According to Article 31 of the Vienna Convention on the Law of Treaties, a preamble provided a relevant context for interpretation of a treaty. Therefore, once work on establishing the operative part of the treaty was over, a common understanding of that operative part could be found, so that the preamble could actually serve its initial purpose of being an instrument on how to interpret the treaty.

94. The Delegation of Brazil responded by clarifying that it was flexible with regard to the order in which the non-paper could be discussed. However, the provisions that appeared in the Preamble should be taken to the body of the text. As long as there was agreement in that regard, those provisions could be discussed at the end. With that understanding there was also flexibility to explore different language for the ideas contained in those three paragraphs of the Preamble.

95. The presiding Vice-Chair explained that, as agreed by the Committee, the discussion on substance would be based on the non-paper and proceed article by article. According to the decision by the General Assembly, the objective of the discussion was to reach a consensus on the basic proposal with the understanding that the treaty should be signal-based and that the consensus should cover the objectives, specific scope and protection in the future treaty. With that understanding, he opened the floor for discussion on the Preamble and the title.

96. The Delegation from Brazil had no comment on the title, although the word “signal” could have been inserted in the title to strictly follow the signal-based approach. The three paragraphs of the Preamble that derived from its proposals should not yet be considered, because a new proposal would be presented in form of articles at a second stage of the debate devoted to discussing the articles. The new drafts would cover the issues dealt by preamble paragraphs 4, 5 and 6.

97. The Delegation of Switzerland agreed with the Delegation of Brazil in deferring the discussion on the Preamble. However, it was surprised to hear that that Delegation would propose a conversion of paragraphs 4, 5 and 6 of the preamble into articles of the treaty. It would be interesting to learn the views of other delegations regarding such announcement.

98. The Delegation of India suggested that in paragraphs 1 and 4 of the Preamble the words “rights of” be either deleted or substituted with the word “broadcast”. That was necessary as the treaty was for the protection of signals and not to provide positive rights.

99. The Delegation of the United States of America declared itself flexible with regard to whether preambular language should be addressed at a later point. However, it was particularly concerned with possibly placing items about access to knowledge and promotion of public interests or cultural diversity in the operative language of the text. The concern related to the impact of such provisions on future copyright treaties and its effect on other intellectual property areas.

100. The Delegation of the Islamic Republic of Iran supported that paragraph 4 of the Preamble, because of the importance in maintaining balance between the rights of broadcasting organizations and the interest of the general public, be replaced by Alternative RR of Article 3 in document SCCR/15/2 Rev.

101. The Delegation of Senegal expressed its lack of understanding regarding the statement made by the Delegation of Brazil, according to which the Preamble, which consisted of a number of paragraphs, would be partly transformed into articles. If that was the case it would be important to have an outline of the preamble in order to have constructive discussion.

102. The Delegation of Egypt stated that, in order to adapt to the new signal-based approach which the General Assembly had recommended, the title should be renamed the “WIPO Treaty regarding the Protection of the Rights of Broadcasting Organizations in their Signals”. In that way it would be fully recognized what the treaty aimed at protecting. Moreover, it

would be suitable to amend the first paragraph of the Preamble to say "desiring to develop and maintain the protection of the rights of broadcasting organizations regarding their signals" and similarly in paragraph 4 to say, "recognizing the need to maintain a balance between the rights of broadcasting organizations regarding their signals and the interests of the general public". In paragraph 7 a possible inconsistency could exist in joining two opposing principles when it was said "recognizing the objective to establish an international system of protection of the rights of broadcasting organizations regarding their signals without compromising the rights of holders of copyright …"

103. The Delegation of South Africa agreed with the Delegations of Brazil, India and other countries stressing the importance of maintaining the focus on protecting signals of broadcasting organizations against acts of theft or acts of piracy. Therefore, the treaty should not provide exclusive rights to broadcasting organizations. Consistent with that signal-based approach, a couple of changes to the Preamble would be required. Regarding the use of the words "rights of broadcasting organizations" there was a need to clarify that the rights of broadcasting organizations should always be understood as rights over the signals. Alternatively, one might just delete the word "rights" and refer to the protection of broadcasting organizations in respect of their signals. That correction applied to paragraphs 1, 4 and 7. The Delegation of Brazil had referred to the concepts contained in paragraphs 2, 3 and 4 relating to the promotion of access to knowledge and information, national education, scientific objectives and competitive practices. Those important provisions for developing countries should be reinserted in the operative provisions in line with document SCCR/15/2 Rev.

104. The Delegation of Chile proposed that the title be amended to read "WIPO Treaty on the Protection of the Signals of Broadcasting Organizations". The existing Preamble was very appropriate in that it covered the objectives and the principles which would form the content of the treaty. However, it was also important that those objectives and principles be reflected in an appropriate manner in the substantive part, so it was necessary to include in the substantive text the provisions that referred to the protection of competition and access to information.

105. The Delegation of Switzerland proposed that the wording of paragraph 4 in the Preamble be changed to incorporate the wording of paragraph 4 in the Preamble of the WPPT. Paragraphs 5 and 6 should be deleted for the reasons mentioned by the Delegation of the United States of America, namely, that those clauses could have a rather serious effect on the substance of the treaty and on the rights to be granted to broadcasters. Furthermore, they could also have a deleterious effect on the interpretation of other treaties, particularly the WPPT and the WCT. As the objective of the discussion was to build a consensus on a basic proposal that would lead forward to a diplomatic conference, the Delegation could be reasonably flexible regarding the Preamble, provided that other delegations were ready to show the same level of flexibility regarding the substantive provisions.

106. The Delegation of Algeria, speaking on behalf of the African Group, stated that, given the size and diversity within its Group, other member delegations would express their opinions where the views in the Group diverged. Regarding paragraph 4 of the Preamble, the Group felt that promoting access to knowledge and to information in accordance with national educational and scientific objectives was of vital importance to economic, scientific and technological development, as was fighting against anticompetitive practices and promoting public interest. In consequence, all those elements should be reflected in the body of the text. The Group remained open as to how those points could and should be reflected in the body of

the text. Paragraph 7 was also very important, and it should be slightly amended to introduce the word “copyright” in the second line, so it would say “of copyright”. Moreover, the status and position should also be changed by moving it to become paragraph 2.

107. The Delegation of Pakistan highlighted the importance of a balanced approach between the rights and the interests of the general public, as reflected in paragraph 4 of the Preamble, where mention was made of such key goals as the access to knowledge and information, national educational and scientific objectives, curbing anti-competitive practices, and promotion of the public interest in sectors of vital importance to socio-economic, scientific and technological development. In consequence, paragraph 4 should be moved to the operative provisions.

108. The Delegation of El Salvador had no objection to the text of the Preamble that was being examined. However, the content of Alternative RR of document SCCR/15/2 Rev. had become part of the Preamble and, given its importance; it would be preferable that it remained in the body of the text. Thus, it could be retained in the Preamble but also moved into the body of the text and included in the articles.

109. The Delegation of Colombia stated that for several reasons the Preambles of the WCT and the WPPT offered a better model than the one under discussion. First, many Member States had already acceded to those treaties. They included a commitment in their Preambles to maintain a balance between the rights of right holders and the interest of the public in general, particularly in terms of research, access to information and education. In other words, the most obvious proof that a balance between the rights of right holders and those interests had been achieved was the number of accessions to those Treaties. Secondly, the Preamble as it was being discussed caused particular concern in respect of cultural diversity, the reason being that that issue was not explicitly included in the preambles of the WCT and the WPPT. Moreover, the obligations of broadcasting organizations to deal with the folklore of a country would not come through a treaty on the protection of broadcast signals. Such obligations should be dealt with through other legal instruments, providing broadcasting organizations with guidelines, regulations and quotas, on the basis of which they were supposed to respect cultural diversity. Most countries had legislation requiring broadcasting organizations to alternate national music with foreign music in a certain proportion, or to mention the names of performers, writers and authors. Specific quotas and requirements were established for communication of national interest programs and to distribute programs where national sentiments and culture were conveyed, or with a certain involvement from national artists and authors. On the other hand, the issue of anticompetitive practices did not have anything to do with an intellectual property treaty, particularly one dealing with related rights. The competition authority of each country usually had authority to deal with anticompetitive practices wherever they took place, irrespective of whether it was in the field of intellectual property or elsewhere. To condition support of copyright and related rights on the fact that no anticompetitive practices would occur would be a bad precedent for WIPO norm setting activities.

110. The Delegation from Argentina signaled a mistake in the last paragraph of the Preamble of the non-paper when it said “*uniforme*”, uniform in Spanish. The word was there neither in the English nor in the French versions, and therefore it would be preferable to remove it from the Spanish version.

111. The Delegation of Senegal stated that, as indicated by the delegation of Colombia, the Preamble under discussion was a little overloaded, especially if compared with the relatively recent Preambles to the WCT and the WPPT. Moreover, given the importance of the content of paragraph 7, it should be placed immediately after paragraph 1, so as to give it more priority. Finally, paragraph 6 should be deleted from the Preamble.

112. The Chair thanked the Vice Chair of the Committee for presiding over the discussions on the previous day, including interventions from inter-governmental and non-governmental organizations, and a debate on the Preamble. Two days would now be available for debate on the substantive clauses of the draft treaty. Consultations with regional groups had established the methodology to go through the text article by article using document SCCR/15/2 Rev. and, as a working tool, the non-paper. While the Committee would follow the non-paper, document SCCR/15/2 Rev. would serve as an inclusive record of all delegations' proposals and alternatives in the official form. The Committee would then be in a position to formulate an understanding of how the basic proposal for a draft treaty could be established. Although the best setting was an open meeting including all participants, it was impractical to switch back and forth from formal plenary discussions to informal discussions. Therefore, he proposed to commence with an open-ended informal session consisting of every government delegation and the Representatives of the European Community, to allow participants to discuss issues freely, knowing that their words were not being recorded. The findings of that session would allow for the possibility of a smaller, but still open-ended informal session in Room B. Every successful meeting or diplomatic conference had required some informal working methods. The discussions should involve as many delegations as possible, putting forward in a concise manner their solutions on particular issues, because time constraints prevented a full debate on every element in the package. Although consensus and agreement would always be sought, some discussions would have to be shortened where the issue became too complex, or the full complexity of the issue was well known, or the time had been reached for a decision on the issue. Interested delegations could use the lunch break for consultations with a view to reaching a solution to be reported back to the formal or informal sessions of the Committee. Similarly, group sessions would take place during the breaks. Time was too short to make available the different language versions of various proposals, although the Chair and Secretariat would use the breaks to formulate the debate into proposals. Turning to the discussion of the draft text, he noted that the Preamble remained on the table but was put aside from discussion together with the cultural diversity and the public interest clauses in document SCCR/15/2 Rev., until all substantive articles had been discussed.

113. The Delegation of the United States of America stated its understanding that the Committee had agreed to progress by discussing the draft text article by article, beginning with the title and the Preamble. Earlier discussions concerning the Preamble, and the public interest clauses it contained, went to the heart of the protection offered by the draft treaty and, as previously indicated, the Delegation objected to including any reference to those clauses in the operative text of the treaty. Other proposals or issues could not be discussed until those issues were resolved. The unintended consequences of moving forward without having resolved those important issues made progress towards a diplomatic conference untenable. Support was expressed for the statement made by the Delegation of Columbia detailing numerous sound reasons why the public interest clauses did not belong in the operative text of a broadcasting treaty.

114. The Chair noted that the Delegation of the United States of America had stipulated a condition for moving ahead on the substance of discussions. However, the package of clauses could be considered when other issues had been resolved, including the form and level of protection to be included in the draft treaty, which would have an influence on which clauses needed to be included in the Preamble and whether operative clauses were required concerning the public interest. A request was made for flexibility to allow for examination of the substance first, before reconsidering the issues raised by the Delegation of the United States of America.

115. The Delegation of Poland, on behalf of the Group of Central European and Baltic States, noted that, in line with the guidance given by the General Assembly, the Committee should focus its efforts on developing a treaty for the protection of broadcasting organizations using a signal-based approach. That approach was in line with granting rights to broadcasting organizations to guarantee an effective safeguard against signal piracy. Rights were the best means to achieve effective and efficient protection against signal piracy at the international level, and that should be reflected in appropriate language in the treaty. The need was recognized to intensify efforts towards elaborating an acceptable compromise solution that would enable a diplomatic conference to be held before the end of 2007.

116. The Delegation of Brazil stated that the issues dealt with in the Preamble were of interest and sensitivity for Brazil. Different options for discussion included whether or not the issues remained in the Preamble, but the outcome of those discussions should not be prejudged. The Delegation also did not wish to hold discussions on the substantive articles of the draft treaty when some of the core issues appeared in the Preamble but, with a view to facilitating progress, it would agree to setting aside the discussion of issues contained in the title and Preamble until after the core elements of the draft treaty had been discussed.

117. The Chair thanked all delegations that had demonstrated flexibility in the progress of the meeting. He asked the Delegation of the United States of America whether it could consider discussing the substance of the draft text with a view to determining the prospects for reaching agreement on the main content of a draft treaty, if a suitable time could then be found to discuss the sensitive issues that had been raised.

118. The Delegation of the United States of America noted the short time available for discussions, and the flexibility shown by the Delegation of Brazil, and agreed to the Chair's proposed procedure, while reiterating the strong concerns it had earlier raised.

119. The Chair noted both the sensitivity and importance of the issues, and the strong reservation expressed by the Delegation of the United States of America. The Committee would progress, starting with informal sessions.

120. The Delegation of India sought clarification as to whether the Committee would proceed in an informal session for its article by article discussion.

121. The Chair confirmed that the Committee would enter an informal plenary session, and begin discussing the articles from Article 1. Where necessary, the Committee would enter into a formal session.

122. The Delegation of India sought clarification as to the utility of shifting from formal to informal mode. There was sufficient flexibility for delegations to state their views, exchange ideas and reach agreement, and the time for discussion remained the same whether the session was formal or informal. Delegations needed to be precise and state their concerns, and listen to other delegations views, without entering debates.

123. The Chair noted that, although the Delegation of India had no problem with sharing its thoughts in either formal or informal settings, other delegations felt more comfortable in situations where they could speak freely without their words being recorded, other than being noted by other delegations. In an informal setting, delegations could test their flexibility through their interventions in the process of reaching compromise. In past experience of critical situations and during diplomatic conferences, informal sessions had been necessary, and he therefore asked the Delegation of India to be flexible in that respect.

124. The Delegation of India stated that it was cooperative, constructive and flexible, but that it wished to have its interventions recorded. All discussions on the articles should be part of the record, which was not possible in an informal setting. It was unclear how the Committee would progress if discussions were to take place in a formal setting after the informal discussions, or how efficient that approach would be. The discussions should not by default be made in an informal mode when the Delegation would prefer to have its interventions on the record.

125. The Chair noted that also other delegations might wish to have their statements documented for the conference record. He proposed that those delegations should then record their own interventions and make them available in writing, so as to preserve flexibility for other delegations that did not wish their statements to become part of the official record.

126. The Delegation of India asked that it be given the opportunity to put any statements it had made in the informal setting on the record when the Committee returned to the formal setting.

127. The Chair accepted the Delegation of India’s request, noting that in the plenary session all participants were free to ask for and be given the floor on issues set for discussion. The Committee then went into informal session, and representatives of inter-governmental and non-governmental organizations were requested to leave the room.

128. The Chair resumed the formal session, stating that after a week of discussions it was now important to conclude the meeting in a positive sense, so it was advisable to continue informal consultations before engaging in a debate on the conclusions of the committee and the recommendations to the General Assembly. He then suspended the session in order to hold consultations. After the suspension, the Chair proceeded to present draft conclusions (attached as Annex I to this Report), the approval of which would finalize the discussion on item 6 of the Agenda on the protection of broadcasting organizations.

129. The Delegation of Bangladesh, speaking on behalf of the Asian countries, expressed its preference for having a much shorter text and without specific timelines. The document should reflect what had actually happened in the special session. There had been a better understanding of positions held by all stakeholders, but clearly no agreement had been reached. Other specific comments would be made in the course of a paragraph by paragraph discussion.

130. The Delegation of Barbados would not speak on behalf of GRULAC, as the issues had not been coordinated. However, it recommended that the full mandate of the General Assembly be reflected in the draft and that much of the preamble be deleted in order to focus on the contents of the decision.

131. The Delegation of Algeria did not speak on behalf of the African countries as their consultations had concluded that the process should continue, but further consultation was needed regarding the way in which to continue and the dates.

132. The Chair decided to suspend the session in order to enable group consultations. Resuming the session he opened the floor for interventions that could enable the Committee to collect as comprehensive a picture as possible of the prevailing positions.

133. The Delegation of Bangladesh stated that the Asian Group considered that paragraph 3 was of descriptive character and believed that document SCCR/15/2 Rev. should be mentioned therein. In paragraph 5, the first part should remain. The second sentence should read: "The operative articles of the non-paper were discussed in an informal setting and delegations made proposals on those". The third sentence should be deleted. Paragraph 6 should be amended to read: "In the informal discussions it became evident that during the session it would not be possible to reach an agreement on the objectives, specific scope and object of protection with a view to submitting to a diplomatic conference a revised basic proposal as mandated by the General Assembly." The purpose behind the change suggested was that the current language had some scope for different interpretations, so it was preferable to keep it in line with the General Assembly decision. Moving on to paragraph 7, it would read: "While several delegations urged that the efforts to conclude a treaty on protection of broadcasting organizations be continued, it was felt that there was a need for taking time to reflect before proceeding further to explore agreements as mandated by the General Assembly." On page 2 the first point should read, after "The General Assembly": "Takes note of the current status of the work in the SSCR on the protection of the broadcasting organizations and cablecasting organizations". The next bullet point would read: "Acknowledges that progress was made in the process towards better understanding of the positions of the various stakeholders". In the third bullet point a full stop would be placed in the second line after the word "process", eliminating the rest of the sentence. The fourth bullet point would read: "Expresses the wish that all the parties continue to strive to achieve an agreement on the objectives, specific scope and object of protection as mandated by the General Assembly." Then the paragraph that concerned a session for joint analysis would be deleted. In the last part of the recommendation the two bullet points would be replaced with a single bullet point and the new text would read: "Decides that the subject of broadcasting organizations and cablecasting organizations be retained on the agenda of the SCCR for its regular sessions and considers convening of a Diplomatic Conference only after agreement on the objectives, specific scope, and object of protection has been achieved." The underlying idea was to continue to work on the issues and consider convening a diplomatic conference only after there was an agreement on the objectives, specific scope and object of protection as mandated by the General Assembly.

134. The Delegation of Algeria, speaking on behalf of the African Group, expressed support for the continuation of the process and noted that all delegations had made efforts and that a result had been reached in spite of different views. With additional efforts, that result would serve as a basis to reach the expected goal. The Group was in favor of continuing the process, but wanted to ensure that it could have a real chance of being successful. Therefore, all future work would have to confine exactly to the mandate of the General Assembly, and the issue of

the protection of webcasting organizations was something that could be dealt with at a future stage. Several attempts to reintroduce that issue into the discussions had slowed down the discussions. Therefore any future discussions would have to be confined to the mandate of the General Assembly and to the decision of the SCCR which had confined the scope of the new treaty to the protection of traditional broadcasting organizations. It was indispensable to agree on a basic text before any decision could be made on the date of a diplomatic conference. The Group requested that the reference to webcasting be deleted from the conclusions. A third special session of the SCCR could be convened in November 2007, taking into account the possibility of a fourth session. The Group wanted to ensure that the diplomatic conference would be a success but did not want to leave the convening of a diplomatic conference open *ad infinitum*.

135. The Delegation of Barbados indicated that the members of GRULAC would take the floor individually.

136. The Delegation of China noted that several years of work had produced meaningful results and reiterated its commitment to the adoption of an international instrument on the protection of broadcasting organizations, which had been made more acute by the development of new technologies. The balance of rights with other right holders and the public interest had also to be further stressed. It supported the continuation of the Committee's work with a view to achieving the adoption of the treaty.

137. The Delegation of Mexico noted that the protection of broadcasting organizations was a topic of key importance in the global economy, and it had been committed to the adoption of the treaty while striking a balance between protection imperatives and social requirements related to the protection of the public interest. There was a need to maintain continuity in the negotiating process in accordance with the mandate received from the General Assembly and document SCCR/15/2 Rev. had to remain as basis for the negotiations. The work had to resume in the framework of a meeting to be convened by the end of the year in order to achieve progressive headway that could lead to a diplomatic conference.

138. The Delegation of Australia suggested some changes to the wording of the draft conclusions relating to the third bullet point under the General Assembly, referring to "the process of updating the protection of traditional broadcasting organizations and cablecasting organizations".

139. The Delegation of Japan supported the draft conclusions.

140. The Delegation of El Salvador supported the draft conclusions and stated that the work was not yet concluded and needed to be pursued in order to finalize an instrument that would be adopted by consensus and could meet the broadcasters' requirements. An additional special session could be organized and flexibility could be shown in that respect.

141. The Delegation of the European Community, speaking also on behalf of its member States, reiterated its commitment to the process and its willingness to further engage in discussions with any delegation that would require clarification on the European approach.

142. The Delegation of India noted that divergent views still existed on the instrument and that time and efforts would be needed to reconcile the various points of views. All delegations were now endorsed with better understanding of the issues and the positions of the Member States. The issue had to be discussed at the next session of the General

Assembly which should be asked to provide advice on the following steps. Some further reflection was needed at that stage to best achieve the objectives of the negotiation. The Committee had until now focused on one main issue, which had been the protection of broadcasting organizations, while many other issues, such as access to knowledge and education, had to be addressed in the ambit of the Committee.

143. The Delegation of Norway supported the draft conclusions.

144. The Delegation of Brazil indicated that some time had to be given for reflection and indicated its preference for a regular session of the SCCR to be convened in November or December 2007.

145. The Delegation of Turkey indicated that the non-papers had to be referred to in the draft conclusions.

146. The Chair noted that the Committee by consensus adopted the following Conclusions:

> "Following the decision of the WIPO General Assembly in its Thirty-third Session in September/October 2006, the Standing Committee on Copyright and Related Rights (SCCR) convened in the First and Second Special Sessions, from January 17 to 19, and from June 18 to 22, 2007.
>
> "The decision of the General Assembly stated that '[t]wo special sessions of the Standing Committee on Copyright and Related Rights to clarify the outstanding issues will be convened, the first one in January 2007, and the second one in June 2007 in conjunction with the meeting of the preparatory committee. It is understood that the sessions of the SCCR should aim to agree and finalize, on a signal-based approach, the objectives, specific scope and object of protection with a view to submitting to the Diplomatic Conference a revised basic proposal, which will amend the agreed relevant parts of the Revised Draft Basic Proposal [referred to in (ii)]. The Diplomatic Conference will be convened if such agreement is achieved. If no such agreement is achieved, all further discussions will be based on document SCCR/15/2.
>
> "The discussions in the Second Special Session were based on the Revised Draft Basic Proposal (SCCR/15/2 Rev) which is the official comprehensive working document of the Committee, and a non-paper of April 20, 2007 prepared by the Chair.
>
> "During the session the delegations made their general statements and discussed thoroughly the procedure of deliberations. The intergovernmental and non-governmental organizations were given the opportunity to make statements.
>
> "In the informal discussions it became evident that, during the session, it would not be possible to reach an agreement on the objectives, specific scope and object of protection with a view to submitting to a diplomatic conference a revised basic proposal as mandated by the General Assembly.
>
> "While several delegations urged that the efforts to conclude a treaty on protection of broadcasting organizations be continued, it was felt that there was a need to take time to reflect before proceeding further to explore agreement as mandated by the General Assembly."

"*The Committee made the following recommendation:*

"The General Assembly

- Takes note of the current status of the work in the SCCR on the protection of broadcasting organizations and cablecasting organizations.
- Acknowledges that progress was made in the process towards better understanding of the positions of the various stakeholders.

- Recognizes the good faith efforts of all participants and stakeholder organizations throughout the process.

- Expresses the wish that all the parties continue to strive to achieve an agreement on the objectives, specific scope and object of protection, as mandated by the General Assembly.

"The General Assembly

- Decides that the subject of broadcasting organizations and cablecasting organizations be retained on the agenda of the SCCR for its regular sessions and considers convening of a Diplomatic Conference only after agreement on objectives, specific scope and object of protection has been achieved."

147. The Delegation of Bangladesh, speaking on behalf of the Asian Group members, stated that it remained constructively engaged in finding consensus that would allow moving forward on a treaty on broadcasting and cable casting, but noted that the Committee had been unable to make progress. The process was not at its end, and the Group would continue looking for a way forward towards reaching broad agreement on key principles, scope and objectives before undertaking any attempt to reach consensus on specific language.

CLOSING OF THE SESSION

148. The Chair declared the session closed.

[Annex follows]

ANNEXE/ANNEX

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

I. MEMBRES/MEMBERS

(dans l'ordre alphabétique des noms français des États/
in the alphabetical order of the names in French of the States)

AFGHANISTAN

Najib MANALAI, Adviser to the Minister, Ministry of Information and Culture, Kabul

AFRIQUE DU SUD/SOUTH AFRICA

Patrick KRAPPIE, Deputy Director, Department of Foreign Affairs, Pretoria

Glenn Ujebe MASEKOANE, Director, Multi-Disciplinary, Department of Arts and Culture, Pretoria

Vicky BEUKES, Lawyer, Department of Arts and Culture, Pretoria

Collen Dimakatso MASHILLE, Senior Manager, Broadcasting Policy, Independent Communications Authority of South Africa (ICASA), Soshanguve

Neo Rachel Joyce IMASIKU (Ms.), Company Secretary, Chief Executive Office, Department of Communications, (SENTECH), Johannesburg

Johan W. VAN WYK, Counsellor, Permanent Mission, Geneva

ALGÉRIE/ALGERIA

Mohamed BOUDRAR, directeur, Affaires juridiques et des relations internationales, Office national du droit d'auteur et des droits voisins (ONDA), Alger

Boumediene MAHI, premier secrétaire, Mission permanente, Genève

ALLEMAGNE/GERMANY

Jens STÜHMER, Richter, Division for Copyright and Publishing Law, Federal Ministry of Justice, Berlin

Irene PAKUSCHER (Ms.), Head, Division for Copyright and Publishing Law, Federal Ministry of Justice, Berlin

ANGOLA

Angélica MARQUES DA COSTA (Mme), troisième secrétaire, Mission permanente, Genève

ARGENTINE/ARGENTINA

Inés Gabriela FASTAME (Mme), deuxième secrétaire, Mission permanente, Genève

AUSTRALIE/AUSTRALIA

Chris CRESWELL, Copyright Law Consultant, Copyright Law Branch, Attorney-General's Department, Canberra

Peter LUNN, Manager, Copyright and Trade, Content and Media Division, Department of Communication, Information Technology and the Arts (DCITA), Canberra

AUTRICHE/AUSTRIA

Günter AUER, Chief Public Prosecutor, Ministry of Justice, Vienna

BARBADE/BARBADOS

Corlita BABB-SCHAEFER (Ms.), Counsellor, Permanent Mission, Geneva

BELGIQUE/BELGIUM

Gunther AELBRECHT, attaché, Office de la propriété intellectuelle, Bruxelles

BÉNIN/BENIN

Samuel AHOKPA, directeur du Bureau béninois du droit d'auteur (BUBEDRA), Ministère de la culture, de l'artisanat et du tourisme, Cotonou

Yao AMOUSSOU, premier conseiller, Mission permanente, Genève

BRÉSIL/BRAZIL

Jeferson Fued NACIF, chef, Affaires internationales, Ministère des communications, Brasilia

Henrique CHOER MORAES, diplomate, Ministère des relations extérieures, Brasilia

Samuel BARICHELLO CONCEICÕ, spécialiste en politique publique, Droit d'auteur, Brasilia

Guilherme AGUIAR PATRIOTA, conseiller, Mission permanente, Genève

BULGARIE/BULGARIA

Georgi DAMYANOV, Director, Copyright and Related Rights Department, Ministry of Culture, Sofia

BOTSWANA

Rhee O. HETANANG, First Secretary, Permanent Mission, Geneva

CAMBODGE/CAMBODIA

Bunthan THAY, First Secretary, Permanent Mission, Geneva

BURUNDI

Emmanuel NDABISHURIYE, deuxième conseiller, Mission permanente, Genève

CANADA

Albert CLOUTIER, Director, Intellectual Property Policy, Department of Industry, Ottawa

Bruce COUCHMAN, Senior Adviser, Intellectual Property Policy Directorate, Marketplace Framework Policy Branch, Department of Industry, Ottawa

Danielle BOUVET, Director, Copyright Policy, Copyright Policy Branch, Ottawa

Sara WILSHAW (Ms.), First Secretary, Permanent Mission, Geneva

CHILI/CHILE

Luís VILLARROEL VILLALON, Asesor Propiedad Intelectual, Ministerio de Educación, Alameda

Maximiliano SANTA CRUZ, Primer Secretario, Misión Permanente, Ginebra

CHINE/CHINA

ZHAO Xiuling (Ms.), Director, Copyright Enforcement Division, Copyright Department, National Copyright Administration of China (NCAC), Beijing

DENG Yuhua (Ms.), Deputy Director, General Affairs and International Affairs Division, Copyright Department, National Copyright Administration of China (NCAC), Beijing

LEUNG Ada Ka Lai (Ms.), Assistant Director (Copyright), Intellectual Property Department, Government of the Hong Kong Special Administrative Region

ZHANG Ling (Ms.), Division Director, Legal Department, State Administration of Radio, Film and Television (SARFT), Beijing

COLOMBIE/COLOMBIA

Fernando ZAPATA LÓPEZ, Director General, Dirección Nacional de Derecho de Autor, Unidad Administrativa Especial, Ministerio del Interior y de Justicia, Bogotá

COSTA RICA

Laura THOMPSON, Embajador, Representante Permanente, Misión Permanente, Ginebra

Carlos GARBANZO, Ministro Consejero, Misión Permanente, Ginebra

CÔTE D'IVOIRE

Tiémoko MORIKO, conseiller, Mission permanente, Genève

Kouassi Alexis SOUNGALO, conseiller, Mission permanente, Genève

CROATIE/CROATIA

Vesna STILIN (Ms.), Assistant Director General, Copyright and Related Rights, State Intellectual Property Office, Zagreb

Tajana TOMIĆ (Ms.), Head, Copyright Department, State Intellectual Property Office, Zagreb

DANEMARK/DENMARK

Martin KYST, Special Adviser, Ministry of Culture, Copenhagen

ÉGYPTE/EGYPT

Mohamed Nour FARAHAT, Chief, Permanent Office for Copyright Protection, Cairo

Ragui EL-ETREBY, First Secretary, Permanent Mission, Geneva

ÉQUATEUR/ECUADOR

Juan HOLGUIN, Chargé d'Affaires, Misión Permanente, Ginebra

Luis VAYAS VALDIVIESO, Primer Secretario, Misión Permanente, Ginebra

Sofia MORENO (Sra.), Asistente, Misión Permanente, Ginebra

ESPAGNE/SPAIN

Francisco Javier APARICIO ÁLVAREZ, Consejero, Misión Permanente, Ginebra

ESTONIE/ESTONIA

Katrin SIBUL (Ms.), Third Secretary, Permanent Mission, Geneva

ÉTATS-UNIS D'AMÉRIQUE/UNITED STATES OF AMERICA

Paul E. SALMON, Senior Counsel, Office of International Relations, Patent and Trademark Office, Department of Commerce, Alexandria, Virginia

David O. CARSON, Associate Register for Policy and International Affairs, Copyright Office, Library of Congress, Washington, D.C.

Ann E. CHAITOVITZ (Ms.), Attorney-Adviser, Office of International Relations, Patent and Trademark Office, Department of Commerce, Alexandria, Virginia

Marla C. POOR (Ms.), Policy Planning Adviser, Copyright Office, Library of Congress, Washington, D.C.

Michael SHAPIRO, Attorney-Adviser, Office of International Relations, Patent and Trademark Office, Department of Commerce, Alexandria, Virginia

FÉDÉRATION DE RUSSIE/RUSSIAN FEDERATION

Ivan BLIZNETS, Rector, Russian State Institute of Intellectual Property (RGIIS), Federal Service for Intellectual Property, Patents and Trademarks, Rospatent, Moscow

Zaurbek ALBEGONOV, Chief Specialist – Expert, International Cooperation, Federal Service for Intellectual Property, Patents and Trademarks, Rospatent, Moscow

Natalia BUZOVA (Ms.), Senior Researcher, Federal Institute of Industrial Property (FIPS), Rospatent, Moscow

Natalia ROMASHOVA (Ms.), Head, Law Division, Ministry of Culture, Moscow

FINLANDE/FINLAND

Jukka LIEDES, Director, Ministry of Education and Culture, Helsinki

Jorma WALDÉN, Government Counsellor, Legal Affairs, Culture and Media Division, Ministry of Education, Helsinki

Anna Elisa Carita VUOPALA (Ms.), Government Secretary, Copyright, Ministry of Education and Culture, Helsinki

FRANCE

Hélène DE MONTLUC (Mme), chef du bureau propriété intellectuelle, Ministère de la culture et de la communication, Paris

Anne LE MORVAN (Mlle), chargée de mission, Bureau de la propriété littéraire et artistique, Direction de l'administration générale, Sous-direction des affaires juridiques, Ministère de la culture et de la communication, Paris

Lucie HUSSON (Mme), Bureau du régime juridique de l'audiovisuel, Direction du développement des médias, Ministère de la culture et de la communication, Paris

Gilles BARRIER, premier secrétaire, Mission permanente, Genève

Julie LEFEBRE, Mission permanente, Genève

GHANA

Bernard Katernor BOSUMPRAH, Copyright Administrator, Copyright Office, Ministry of Justice, Accra

GRÈCE/GREECE

Maria-Daphne PAPADOPOULOU (Ms.), Counsellor-at-Law, Hellenic Copyright Organization, Ministry of Culture, Athens

HAÏTI/HAITI

Pierre Mary Guy ST. AMOUR, conseiller, Mission permanente, Genève

HONGRIE/HUNGARY

Péter MUNKÁCSI, Deputy Head, Copyright Section, Hungarian Patent Office, Budapest

Anikó GYENGE, Legal Counsel, Ministry of Justice and Law Enforcement, Budapest

INDE/INDIA

Zohra CHATTERJI (Ms.), Joint Secretary, Ministry of Information and Broadcasting, Government of India, New Delhi

Madhukar SINMA, Director, Ministry, Ministry of Human Resources Development, Government of India, New Delhi

N. S. GOPALAKRISHNAN, Official, Government of India, Ministry of Information and Broadcasting and Professor, School of Legal Studies, Cochin University of Science and Technology, Kerala

Mohinder S. GROVER, Deputy Permanent Representative, Permanent Mission, Geneva

INDONÉSIE/INDONESIA

Andy Noorsaman SOMMENG, Director, Information Technology, Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights, Tangerang

Achmad HOSSAN, Executive Secretary, Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights, Jakarta

IRAN (RÉPUBLIQUE ISLAMIQUE D')/IRAN (ISLAMIC REPUBLIC OF)

Mohammad Reza SAEIDABADI, Head, British Studies Department, Institute for North American and European Studies, University of Tehran, Tehran

Seyed Ali MOUSAVI, General Manager, Legal Department, Islamic Republic of Iran Broadcasting (IRIB), Tehran

Gholam Reza RAFEEI, Attorney-at-Law, Islamic Republic of Iran Broadcasting (IRIB), Tehran

Changiz HASANI, International Affairs, Saba Animation Center, Islamic Republic of Iran Broadcasting (IRIB), Tehran

ISRAËL/ISRAEL

Noa FURMAN, Counsellor, Permanent Mission, Geneva

ITALIE/ITALY

Vittorio RAGONESI, Legal Adviser, Ministry of Foreign Affairs, Rome

Augusto MASSARI, First Secretary, Permanent Mission, Geneva

Francesco LUCCISANO, Intern, Permanent Mission, Geneva

JAPON/JAPAN

Yu KAMEOKA, Director, International Affairs Division, Commissioner's Secretariat, Agency for Cultural Affairs, Tokyo

Koichi CHIYO, Deputy Director, International Affairs Division, Commissioner's Secretariat, Agency for Cultural Affairs, Tokyo

Kuniko TERAMOTO (Ms.), Assistant Director, Contents Development Office, Information Policy Division, Information and Communications Policy Bureau, Ministry of Internal Affairs and Communications, Tokyo

Hidetoshi KATO, Programming Division, Copyright Department, TV Tokyo Corporation, Tokyo

Mitsushi KIKUCHI, Patent Attorney, Head, Intellectual Property, TV Asahi Corporation, Tokyo

Seijiro YANAGIDA, Associate General Manager, Copyright Administration, Rights and Contracts Management, Compliance and Standards, Nippon Television Network Corporation, Tokyo

Shinichi UEHARA, Visiting Professor, Interdisciplinary Intellectual Property Laws, Graduate School Kokushikan University, Tokyo

KENYA

Marisella OUMA (Ms.), Acting Executive Director, Office of the Attorney General, State Law Office, Nairobi

Bernice Wanjiku GACHEGU (Ms.), Registrar General, State Law Office of the Attorney General, State Law Office, Nairobi

Hezekíel OÍRA, Corporation Secretary, Kenya Broadcasting Corporation (KBC), Nairobi

LETTONIE/LATVIA

Ilona PETERSONE (Ms.), Deputy Head, Copyright and Related Rights Unit, Ministry of Culture, Riga

Ileva DREIMANE (Ms.), First Secretary, Permanent Mission, Geneva

LIBAN/LEBANON

Nada AL AKL (Mme), premier secrétaire, Mission permanente, Genève

LUXEMBOURG

Christiane DALEIDEN DISTEFANO (Mme), représentant permanent adjoint, Mission permanente, Genève

L'EX-RÉPUBLIQUE YOUGOSLAVE DE MACÉDOINE/THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Biliana TANOVSKA (Ms.), Head of Unit, Department for Author's Rights, Ministry of Culture, Skopje

Maja KAMBOVSKA (Ms.), Collaborator, Sector for Copyright and Related Rights, Ministry of Culture, Skopje

MALAISIE/MALAYSIA

Amasz MANISEKARAN, Director of Copyright, Intellectual Property Corporation of Malaysia, Kuala Lumpur

Munira MURAD (Ms.), Broadcaster, Department of Broadcasting, Ministry of Information, Kuala Lumpur

MALAWI

Serman Wedson David CHAVULA, Copyright Administrator, Copyright Society of Malawi (COSOMA), Lilongwe

MAROC/MOROCCO

Abdellah OUADRHIRI, directeur général du Bureau marocain du droit d'auteur (BMDA), Rabat

M'hamed SIDI EL KHIR, conseiller, Mission permanente, Genève

MEXIQUE/MEXICO

Juan María NAVEJA DE ANDA, Subsecretario de Normatividad de Medios, Secretaría de Gobernación, México

Rafael DEL VILLAR ALRICH, Subsecretario de Comunicaciones y Transportes, Secretaría de Comunicaciones y Transportes, México

Adolfo Eduardo MONTOYA JARKIN, Director General, Instituto Nacional de Derecho de Autor (INDAUTOR), México

Arturo ANCONA GARCÍA-LOPEZ, Director de Protección Contra la Violación del Derecho de Autor, Instituto Nacional de Derecho de Autor (INDAUTOR), México

Fernando MUÑOZ DOMINGUEZ, Secretario Particular, Subsecretaría de Normatividad de Medios, Secretaría de Gobernación, México

Luís Fernando BORJON FIGUEROA, Director de Seguimiento y Logística, Subsecretaría de Comunicaciones, Secretaría de Comunicaciones y Transportes, México

Alejandro NAVARRETE TORRES, Director General, CINIT, Cámara Nacional de la Industria de Telecomunicaciones por Cable (CANITEC), México

Héctor Hugo HUERTA REYNA, Director Jurídico y de Asuntos Internacionales, Cámara Nacional de la Industria de Telecomunicaciones por Cable (CANITEC), México

Luís Alejandro BUSTOS OLIVARES, Representante Especial de la Cámara Nacional de la Industria de Radio y Televisión, México

Alejandro PUENTE CORDOBA, Presidente del Consejo Directivo, Cámara Nacional de la Industria de Telecomunicaciones por Cable (CANITEC), México

Rogelio ESPINOSA CANTELLANO, Asesor Regulatorio, Cámara Nacional de la Industria de Telecomunicaciones por Cable (CANITEC), México

Jorge Rafael CUEVAS RENAUD, Consejero Consultivo, Cámara Nacional de la Industria de Telecomunicaciones por Cable (CANITEC), México

Juan-Manuel SÁNCHEZ, Segundo Secretario, Misión Permanente, Ginebra

MOLDOVA

Dorian CHIROŞCA, directeur général de l'Agence d'État pour la propriété intellectuelle, Kishinev

NÉPAL/NEPAL

Lila Dhar ADHIKARI, Officer (Intern), Permanent Mission, Geneva

NIGÉRIA/NIGERIA

Maigari BUBA, First Secretary, Permanent Mission, Geneva

NORVÈGE/NORWAY

Bengt O. HERMANSEN, Deputy Director General, Department of Media Policy and Copyright, Ministry of Culture and Church Affairs, Copenhagen

Tore Magnus BRUASET, Senior Adviser, Ministry of Culture and Church Affairs, Copenhagen

NOUVELLE-ZÉLANDE/NEW ZEALAND

Silke RADDE (Ms.), Policy Analyst, Ministry of Economic Development, Wellington

OMAN

Fatima Abdullah Ahmed AL-GHAZALI (Ms.), Counsellor, Commercial Affairs, Permanent Mission, Geneva

OUGANDA/UGANDA

Anne NABAASA (Ms.), Second Secretary, Permanent Mission, Geneva

OUZBÉKISTAN/UZBEKISTAN

Abdulla ARIPOV, Deputy Prime Minister and General Director, Uzbek Republican State Copyright Agency, Tashkent

Tuygunjon AGLAMOV, Head of Department, Ministry of Foreign Affairs, Tashkent

Golibsher ZIYAYEV, Vice-Chairman, National TV-Radio Company, Tashkent

Badriddin OBIDOV, First Secretary and Chargé d'Affaires a.i., Permanent Mission, Geneva

Alisher MURSALIYEV, Third Secretary, Economic Affairs and WTO, Permanent Mission, Geneva

PAKISTAN

Yousaf Rehan HAFIZ, Attaché, Ministry of Foreign Affairs, Geneva

PAYS-BAS/NETHERLANDS

Cyril VAN DER NET, Legal Adviser, Ministry of Justice, The Hague

PÉROU/PERU

Alejandro NEYRA, Primer Secretario, Misión Permanente, Ginebra

POLOGNE/POLAND

Malgorzata PĘK (Ms.), Deputy Director, Legal Department, National Broadcasting Council, Warsaw

Dariusz URBAŃSKI, Specialist, Legal Department, Ministry of Culture, Warsaw

PORTUGAL

Nunu Manuel da Silva GONÇALVES, directeur du cabinet du droit d'auteur, Direction du droit d'auteur et des droits connexes, Ministère de la culture, Lisbonne

RÉPUBLIQUE DÉMOCRATIQUE DU CONGO/DEMOCRATIC REPUBLIC OF THE CONGO

Fidèle Khakessa SAMBASSI, ministre conseiller, Mission permanente, Genève

RÉPUBLIQUE DE CORÉE/REPUBLIC OF KOREA

JANG Kyung-Keun, Deputy Director, Copyright Policy Team, Ministry of Culture and Tourism, Seoul

OH Kiseok, Researcher, Policy Research Team, Copyright Commission for Deliberation and Conciliation, Seoul

PARK Heui-Jeong, Special Adviser, Korean Broadcasting Commission (KBC), Seoul

PARK Seong-Im, Department of Legal Affairs, Korean Broadcasting Commission (KBC), Seoul

CHOI David Jin-Hoon Choi, Copyright and Legal Affairs Division, Manhwa Broadcasting Corporation, Seoul

RÉPUBLIQUE TCHÈQUE/CZECH REPUBLIC

Adéla FALADOVÁ (Ms.), Deputy Head, Copyright Department, Ministry of Culture, Prague

Andrea PETRÁNKOVÁ (Ms.), Third Secretary, Permanent Mission, Geneva

ROUMANIE/ROMANIA

Livia Cristina PUSCARAGIU (Ms.), Second Secretary, Permanent Mission, Geneva

ROYAUME-UNI/UNITED KINGDOM

Duncan WEARMOUTH, Director, Copyright and Intellectual Property Enforcement Directorate, Concept House, Intellectual Property Office, Newport

Lisa VANGO (Ms.), Senior Policy Adviser, Copyright, Copyright and Intellectual Property Enforcement Directorate, Concept House, Intellectual Property Office, Newport

SAINT-SIÈGE/HOLY SEE

Silvano M. TOMASI, Nuncio Apostolic, Permanent Mission, Geneva

Giacomo GHISANI, Head, International Relations and Legal Affairs, Radio Vatican, Vatican City

Anne-Marie COLANDRÉA (Mme), Attaché, Legal Adviser, Permanent Mission, Geneva

Fernando CHICA ARELLANO, Counsellor, Permanent Mission, Geneva

SÉNÉGAL/SENEGAL

N'deye Abibatou Youm DIABE SIBY (Mme), directrice générale du Bureau sénégalais du droit d'auteur, Dakar

Madjiguène MBENGUE MBAYE (Mme), conseiller juridique, Chef cellule affaires juridique et Relations internationales auprès du Directeur général de la Radiodiffusion télévision sénégalaise (RTS), Dakar

SERBIE/SERBIA

Ljiljana RUDIĆ-DIMIĆ (Ms.), Head, Copyright and Related Rights Department, Intellectual Property Office, Belgrade

SINGAPOUR/SINGAPORE

ANG I-Ming, Director and Legal Counsel, Policy Division, Legal Policy and International Affairs Department, Intellectual Property Office (IPOS), Singapore

LEONG Elaine Siew Fong (Ms.), Senior Assistant Director and Legal Counsel, Policy Division, Copyright Department, Intellectual Property Office (IPOS), Singapore

LIM Teck Hong, Assistant Manager, Market Policy, Media Policy, Media Development Authority (MDA), Singapore

SLOVÉNIE/SLOVENIA

Petra BOŠKIN (Ms.), Senior Adviser, Legal Department, Slovenian Intellectual Property Office (SIPO), Ministry of Economy, Ljubljana

Dušan VUJADINOVIĆ, Counsellor, Permanent Mission, Geneva

SOUDAN/SUDAN

Mohamed Hassan KHAIR, Second Secretary, Permanent Mission, Geneva

SUÈDE/SWEDEN

Henry OLSSON, Special Government Adviser, Division for Intellectual Property and Transport Law, Ministry of Justice, Stockholm

Elizabeth BILL (Ms.), Legal Adviser, Ministry of Justice, Stockholm

SUISSE/SWITZERLAND

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

TAJIKISTAN

Nemon MUKUMOV, Head, Department of Law and Copyright, Ministry of Culture, Dushanbe

THAÏLANDE/THAILAND

Supavadee CHOTIKAJAN, Second Secretary, Permanent Mission, Geneva

TUNISIE/TUNISIA

Mohamed Abderraouf BDIOUI, conseiller, Mission permanente, Genève

TURQUIE/TURKEY

Günay GÖRMEZ (Ms.), Deputy General Director, Copyright, Ministry of Culture and Tourism, Ankara

Belgın ERBAHAYETMEZ (Ms.), Deputy Assistant, General Directorate of Copyright and Cinema, Ministry of Culture and Tourism, Ankara

Erdem TÜRKEKUL, Attorney-at-Law, Adviser, Turkish Radio Television Broadcasters Union, Ankara

URUGUAY

Alfredo José SCAFATI FALDUTI, Presidente, Consejo de Derechos de Autor, Montevideo

ZIMBABWE

Richard CHIBUWE, Counsellor, Permanent Mission, Geneva

II. AUTRES MEMBRES/ NON-STATE MEMBERS

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

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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.

Tilman LUEDER, Head of Unit, Copyright and the Knowledge-based Economy Unit, European Commission, Brussels

Vassilios KANARAS, Administrator, Council, European Union, Brussels

David BAERVOETS, Seconded National Expert, Copyright and the Knowledge-based Economy Unit, European Commission, Brussels

Barbara NORCROSS-AMILHAT (Ms.), Desk Officer, Copyright and the Knowledge-based Economy Unit, European Commission, Brussels

Sergio BALIBREA SANCHO, Counsellor, Permanent Delegation, Geneva

III. ORGANISATIONS INTERGOUVERNEMENTALES/ INTERGOVERNMENTAL ORGANIZATIONS

ORGANISATION INTERNATIONALE DU TRAVAIL (OIT)/ INTERNATIONAL LABOUR ORGANIZATION (ILO)

John MYERS, Industry Specialist, Industry Specialist Sector, Geneva

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

Hannu WAGER, Counsellor, Intellectual Property Division, Geneva

SOUTH CENTRE

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

Ermias Tereste BIADGLENG, Program Officer, Innovation and Access to Knowledge Program, Geneva

UNION AFRICAINE/AFRICAN UNION

Georges-Rémi NAMEKONG, conseiller (Affaires économiques), Délégation permanente, Genève

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

Lyes BELARIBI, Director of ASBU Program and News Exchange Center, Algiers

IV. ORGANISATIONS NON GOUVERNEMENTALES/ NON-GOVERNMENTAL ORGANIZATIONS

Association allemande pour la propriété industrielle et le droit d'auteur (GRUR)/German Association for the Protection of Industrial Property and Copyright Law (GRUR): Norbert P. FLECHSIG, (Attorney-at-Law and Member, Special Committee for Publishing Law, Frechen)

Association brésilienne des émetteurs de radio et de télévision (ABERT): Alexandre JOBIM (Legal Counsel, Brasilia); João Carlos MULLER CHAVES (Lawyer, Brasilia); Isabella SANTORO (Ms.) (Member, Jurídico, Brasilia)

Association canadienne de télévision par câble (ACTC)/Canadian Cable Television Association (CCTA): Gerald (Jay) KERR-WILSON (Vice President, Legal Affairs, Ottawa)

Association de l'industrie de l'informatique et de la communication (CCIA)/Computer and Communications Industry Association (CCIA): Matthew SCHRUERS (Senior Counsel, Litigation and Legislative Affairs, New York)

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

Association européenne des radios (AER)/Association of European Radios (AER): Frederik STUCKI (Secretary General); Vincent SNEED (Association Coordinator, Brussels)

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

Association internationale de radiodiffusion (AIR)/International Association of Broadcasting (IAB): Alexandre JOBIM (Asesor Jurídica, Brasilia); Edmundo Omar RÉBORA (Presidente del Comité Jurídico del Comité de Derecho de Autor, Montevideo); Nicolás NOVOA (Asesor Jurídica, Buenos Aires); Andrés Enrique TORRES (Asesor Jurídica, Buenos Aires)

Association internationale pour la promotion de l'enseignement et de la recherche en propriété intellectuelle (ATRIP)/ International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP): François CURCHOD (représentant, Genolier, Suisse)

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, The Hague)

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

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

Centre d'échange et de coopération pour l'Amérique latine (CECAL)/Exchange and Cooperation Centre for Latin America (ECCLA): Laure KAESER (Mme) (représentante recherche, Genève)

Centre international pour le commerce et le développement durable (ICTSD)/International Center for Trade and Sustainable Development (ICTSD: David VIVAS EUGUI (Programme Manager, Geneva)

Centre pour le droit international de l'environnement (CIEL)/Center for International Environmental Law (CIEL): Dalindyebo SHABALALA (Director, Project on Intellectual Property and Sustainable Development, European Office, Geneva)

Chambre de commerce internationale (CCI)/International Chamber of Commerce (ICC): David FARES (Vice-President, E-Commerce Policy, News Corporation, New York);
Richard A. JOHNSON (Senior Partner, Arnold & Porter, Washington, D.C.)

Civil Society Coalition (CSC): Thiru BALASUBRAMANIAM (Representative, Geneva);
Nick ASHTON-HART (Adviser, London)

Coalition of Sports Organizations (Sports Coalition): Michael J. MELLIS (Senior Vice-President and General Counsel, New York); Michele J. WOODS (Ms.) (Arnold & Porter LLP, Washington, D.C.); Nicholas Edward FITZPATRICK (Adviser, London);

Paul Robert SHAW (Adviser, London)

Confédération internationale des sociétés d'auteurs et compositeurs (CISAC)/International Confederation of Societies of Authors and Composers (CISAC): David UWEMEDIMO (Director, Legal Political and Strategic Affairs, Paris)

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

Electronic Frontier Foundation (EFF): Gwen HINZE (Ms.) (International Affairs Director, San Francisco, United States of America)

Electronic Information for Libraries (eIFL.net): Teresa HACKETT (Ms.) (Project Manager, Dublin)

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

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

Fédération ibéro-latino-américaine des artistes interprètes ou exécutants (FILAIE)/ Ibero-Latin-American Federation of Performers (FILAIE): Luís COBOS (Presidente, Madrid); Miguel PÉREZ SOLIS (Asesor Jurídica, Madrid)

Fédération internationale de la vidéo/International Video Federation (IVF):
Michael SHAPIRO (Legal Adviser, Brussels); Jared JUSSIM (Executive Vice-President, Intellectual Property Department, Deputy General Counsel, SONY Pictures, Culver City, United States of America); Theodore Bradley SILVER (Senior Counsel, Intellectual Property, New York); Vincent ARTIS, Legal Counsel, Brussels)

Fédération internationale de l'industrie phonographique (IFPI)/International Federation of the Phonographic Industry (IFPI): Neil TURKEWITZ (Executive Vice President, International Recording Industry Association of America (RIAA), Washington, D.C.);
Shira PERLMUTTER (Ms.) (Executive Vice-President, Global Legal Policy, London)

Fédération internationale des acteurs (FIA)/International Federation of Actors (FIA):
Dominick LUQUER (General Secretary, London); Geoffrey Ken THOMPSON (Ontario, Canada)

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

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

Fédération internationale des associations de producteurs de films (FIAPF)/International Federation of Film Producers Associations (FIAPF): Valérie LEPINE-KARNIK (Mme) (directrice générale, Paris); Alessandra SILVESTRO (Mme) (Bruxelles); Martin SCOTT (Los Angeles, United States of America)

Fédération internationale des journalistes (FIJ)/International Federation of Journalists (IFJ): Mathieu FLEURY (General Secretary, Fribourg); Céline SIMONIN (Mme) (chargée des questions de droit d'auteur, Bruxelles)

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

Independent Film and Television Alliance (IFTA): Lawrence SAFIR (Vice President - European Affairs, London)
Information Society Project at Yale Law School (Yale ISP): Eddan KATZ (Executive Director, Information Society Project, New Haven, United States of America); Katherine MCDANIEL (Ms.) (Resident Fellow, New Haven, United States of America); Eliot PENCE (Student Fellow, New Haven, United States of America)

Information Technology Association of America: Brad BIDDLE, Senior Attorney (Intel Corporation, Chandler, Arizona, United States of America); Loreto REGUERA (Ms.) (Attorney, European Legal Department, Intel Corporation (UK) Ltd., London)

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

International Affiliation of Writers' Guilds (IAWG): Bernie John CORBETT (General Secretary, London)

International Intellectual Property Alliance (IIPA): Fritz ATTAWAY (Executive Vice-President, Special Policy Adviser, Motion Picture Association of America,

Washington, D.C.)

International Music Managers Forum (IMMF): David STOPPS (Head, Copyright and Contracts, London)

IP Justice: Petra BUHR (Ms.), (Global Policy Fellow, San Francisco, United States of America)

Knowledge Ecology International (KEI): Thiru BALASUBRAMANIAM (Representative, Geneva); James Packard LOVE (Washington, D.C.); Manon Anne RESS (Ms.) (Washington, D.C.); Pascale BOULET (Ms.) (Geneva)

National Association of Broadcasters (NAB): Benjamin F. P. IVINS (Senior Associate General Counsel, Washington, D.C.)

North American Broadcasters Association (NABA): Erica REDLER (Ms.) (Chair, NABA Legal Committee, General Counsel, Canadian Association of Broadcasters); Alejandra NAVARRO GALLO (Ms.) (Intellectual Property Attorney, Zug, Switzerland)

Public Knowledge: Sherwin SIY (Representative, Washington, D.C.)
Sports Rights Owners Coalition (SROC): Oliver WEINGARTEN (Secretariat, London)

Third World Network Berhad (TWN): Riaz K. TOYOB (Researcher, Geneva)

Union de radiodiffusion Asie-Pacifique (ABU)/Asia-Pacific Broadcasting Union (ABU): Fernand ALBERTO (Legal Counsel, Asia-Pacific Broadcasting Union (Kuala Lumpur); Junko MORINAGA (Copyright and Contracts Division, Copyright and Archives Center, Japan Broadcasting Corporation (NHK), Tokyo)

Union européenne de radio-télévision (UER)/European Broadcasting Union (EBU): Werner RUMPHORTS (Legal Consultant, Geneva); Heijo RUIJSENAARS (Legal Adviser, Legal Department, Geneva)

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

Union Network International–Media and Entertainment International (UNI-MEI): Johannes STUDINGER (Deputy Director, Brussels)

Union des radiodiffusions et télévisions nationales d'Afrique (URTNA)/Union of National Radio and Television Organizations of Africa (URTNA): Madjiguène MBENGUE MBAYE (Mme) (conseiller juridique, Chef cellule affaires juridique et Relations internationales auprès du Directeur général de la Radiodiffusion télévision sénégalaise (RTS), Dakar)

United States Telecommunications Association (USTA): Sarah DEUTSCH (Ms.) (Vice-President and Associate General Counsel, Verizon, Arlington, Virginia, United States of America); Marilyn CADE (Ms.) (Adviser, Washington, D.C.)

V. BUREAU/OFFICERS

Président/Chair:	Jukka LIEDES (Finlande/Finland)
Vice-présidents/ Vice-Chairs:	Xiuling ZHAO (Ms.) (Chine/China) Abdellah OUADRHIRI (Maroc/Morocco)
Secrétaire/Secretary:	Jørgen BLOMQVIST (OMPI/WIPO)

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

Michael S. KEPLINGER, vice-directeur général/Secteur du droit d'auteur et droits connexes/Deputy Director General, Copyright and Related Rights Sector

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

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

Denis CROZE, directeur-conseiller par interim, Secteur du droit d'auteur et droits connexes/Acting Director-Advisor, Copyright and Related Rights Sector

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

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

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

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

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

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