

WIPO General Assembly

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REPORT ON THE WORK OF THE STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

prepared by the Secretariat

1. The Standing Committee on Copyright and Related Rights (SCCR) met twice since the Forty–Eighth Series of Meetings of the Assemblies of the Member States of WIPO in September 2010, namely in its 21st session from November 8 to 12, 2010; and its 22nd session from June 15 to 24, 2011.
2. At its Thirty-Ninth Session, which took place from September 20 to 29, 2010, the WIPO General Assembly took note of the current status of the work of the SCCR and requested the Secretariat to report at its 2011 session on the deliberations of the SCCR on the protection of broadcasting organizations, protection of audiovisual performances and limitations and exceptions to copyright and related rights.
3. This document provides an update on the status of the work related to the above matters.

A. PROTECTION OF BROADCASTING ORGANIZATIONS

4. It is recalled that the updating of the rights of broadcasting organizations in response to technological developments has been under discussion in all SCCR sessions since 1998, including two special sessions exclusively devoted to that subject in 2007.
5. During the 21st session of the SCCR, the Committee noted and commented on the third part of the Study on the Socioeconomic Dimension of the Unauthorized Use of Signals, addressing the social and economic effects of the proposed treaty on the protection of

broadcasting organizations. The Committee also took note of an Analytical Document, prepared by the Secretariat, on the Study on the Socioeconomic Dimension of the Unauthorized Use of Signals, Parts I, II and III.

6. Reports on various regional meetings, namely the Regional Seminar for Asian and Pacific Countries on the Protection of Broadcasting Organizations and Audiovisual Performances, which took place on July 14 to 16 in New Delhi; the Regional Seminar for African Countries on the Protection of Broadcasting Organizations and Audiovisual Performances, which took place on October 18 to 20, 2010 in Abuja; and the Regional Broadcasting Signal Piracy Seminar for African countries, organized in Johannesburg, on June 6 and 7, 2011; were presented for the consideration of the Committee.

7. In 2010, Members of the Committee were invited to present new proposals on the protection of the broadcasting organizations, if possible in treaty language, in addition to the proposals contained in the document SCCR/15/2 Rev., to form the basis of the preparation of a new draft treaty. In this connection, the Committee took note of the new draft proposals presented by the Delegations of Canada, Japan and South Africa presented in 2011.

8. Informal consultations on the protection of broadcasting organizations were organized in Geneva on April 14 and 15, 2011 by the WIPO Secretariat. The Committee considered and commented the document prepared by the Chair of those consultations on the "Elements for a Draft Treaty on the Protection of Broadcasting Organizations" which sets out possible elements for a draft treaty and to advance discussions.

9. During the 22nd session of the SCCR, Members reaffirmed its commitment to continue work, on a signal based approach, consistent with the 2007 General Assembly mandate, towards developing an international treaty to update the protection of broadcasting and cablecasting organizations in the traditional sense; and approved a work plan prepared by the Chair of the 22nd session of the SCCR. The work plan includes the organization of a two-day informal consultation on the protection of broadcasting organizations and cablecasting organizations in connection with the SCCR/23 session with the aim to progress the work on a draft treaty and to make a recommendation to the 2012 WIPO General Assembly on the possible scheduling of a diplomatic conference.

10. The protection of broadcasting organizations will be maintained on the agenda of the 23rd session of the SCCR, where the timetable on future work program should be agreed upon, taking into account any possible new proposals.

B. PROTECTION OF AUDIOVISUAL PERFORMANCES

11. It is recalled that the Diplomatic Conference on the Protection of Audiovisual Performances, held in December 2000, adopted a provisional agreement on a number of issues but was unable to reach agreement on a proposed treaty aimed at strengthening the rights of performers in their audiovisual performances.

12. In 2010 and 2011, the WIPO Secretariat organized various meetings with the aim of furthering understanding on the outstanding issues regarding the above rights, namely the regional seminars on the protection of audiovisual performances that took place in New Delhi on July 14 to 16, 2010 and in Abuja on October 18 to 20, 2010 (seminars referred to above under paragraph 6 on broadcasting organizations); as well as the Open-ended Consultations on the Protection of Audiovisual Performances organized in Geneva on May 28, 2010 and on April 13 and 14, 2011. Reports of these meetings were presented to the Committee in its 21st and 22nd sessions, respectively.

13. In its 21st session, the Committee invited Member States to submit written proposals, if possible in treaty language, to address the outstanding issues from the 2000 Diplomatic Conference as well as on any additional or alternative elements for a draft treaty. In this connection the Committee took note and commented the proposals submitted by Brazil, India, Mexico and the United States of America.

14. In its 22nd session, the Committee agreed to recommend to the General Assembly to resume the suspended 2000 Diplomatic Conference. Further information about this recommendation is contained in document WO/GA/40/11.

C. LIMITATIONS AND EXCEPTIONS

15. It is recalled that the SCCR has agreed to address the issue of exceptions and limitations to copyright and related rights for the purposes of education, libraries and persons with disabilities. The issue has been discussed at every ordinary SCCR session, from the 12th session held in November 2004 up to the present.

16. During the 21st session, the Committee agreed with a work program on limitations and exceptions for the two year period 2011-2012. Recognizing the need to advance the more mature areas, the work program encompasses text-based work with the objective of reaching agreement on appropriate limitations and exceptions for persons with print disabilities and other reading disabilities. In a similar manner, text-based work will be undertaken on appropriate exceptions and limitations for libraries, archives, educational, teaching and research institutions, and persons with other disabilities. The work program also includes the preparation of recommendations on these issues to the General Assemblies of 2011 and 2012.

17. As to the issue of limitations and exceptions for persons with print disabilities, three new substantive proposals were presented to the Committee in its 21st session, namely by the United States of America (consensus instrument), the African Group (treaty), and the European Union (recommendation). These three proposals were discussed by the Committee, together with a previous proposal (treaty) put forward by Brazil, Ecuador and Paraguay during the 18th session of the SCCR, which was later endorsed by Argentina and Mexico.

18. In its 22nd session, the Committee took note of two new documents, namely the comparative List of Proposals Related to Copyright Limitations and Exceptions for the Visually Impaired Persons and Other Persons with Print Disabilities, prepared by the Secretariat, and the Draft WIPO Treaty on Exceptions and Limitations for the Persons with Disabilities, Educational and Research Institutions, Libraries and Archives; proposal by the African Group, which revised the previous proposal put forward by this Group in 2010.

19. Informal consultations organized by some of the proponents of the above four substantive proposals on an international instrument on limitations and exceptions for persons with print disabilities served to explore points of commonality and possible convergence among the four texts. During the 22nd session of the SCCR, based on the work undertaken and on comments given by Members of the Committee, a group of Members presented a "Proposal on an international instrument on limitations and exceptions for persons with print disabilities." At the end of the same session, the Committee asked the Chair to prepare a text for an international instrument on limitations and exceptions for persons with print disabilities which will constitute the basis for the future text-based work.

20. The Committee agreed to recommend to the WIPO General Assembly that Members of the Committee continue discussions regarding the abovementioned Chair's document with the aim to agree and finalize a proposal on an international instrument on limitations and exceptions for persons with print disabilities in the 23rd session of the SCCR, in accordance with the timetable adopted at the 21st session of the SCCR.

21. The Committee encouraged the stakeholders to continue the work of the Stakeholders' Platform. The Platform has been led by the WIPO Director General since January 2009.

22. The issue of limitations and exceptions will be maintained on the Agenda of the 23rd session of the SCCR.

D. CONTRIBUTION TO THE IMPLEMENTATION OF THE DEVELOPMENT AGENDA RECOMMENDATIONS

23. Further to the 2010 WIPO General Assembly decision "to instruct the relevant WIPO Bodies to include in their annual report to the Assemblies, a description of their contribution to the implementation of the respective Development Agenda Recommendations," the following declarations extracted from the draft Report of the 22nd session of the SCCR, document SCCR/22/18, paragraphs 508 to 515:

"508. The Delegation of South Africa, speaking on behalf of the African Group, said that the implementation and mainstreaming of the Development Agenda recommendations in all areas in WIPO was of great importance to the African Group. The Committee had made significant strides in the past year in addressing the three main substantive agenda items, namely exceptions and limitations, audiovisual performances and broadcasting organizations. The minimum standards for intellectual property use through exceptions and limitations to copyright and related rights remained an important issue not only to the African Group but to all developing countries and least-developed countries, as well as the developed countries, which had advanced systems of exceptions and limitations upholding the public interest, and especially contributing towards the achievement of the biennium development goals and other international development goals. It was within that context that the African Group attached great importance to the exceptions and limitations for persons with disabilities, including the visually impaired. The African Group was therefore encouraged by the work of the Committee. The WIPO regional seminars on the protection of audiovisual performances and broadcasting organizations held in various countries in 2010 helped developing countries in understanding the socioeconomic impact of norm setting at the international level in the areas of broadcasting and the movie industry. One of the key recommendations of the Development Agenda was to ascertain the application of norm-setting to developing countries. The Abuja seminar for African countries demonstrated the benefits the African countries could derive from the protection of audiovisual performances and broadcasting organizations. The Abuja seminar had also reinforced the need for the Committee to expeditiously working towards concluding the treaties for the protection of audiovisual performances and broadcasting organizations. The Delegation hoped that the session would reach a consensus on a diplomatic conference for adopting a treaty on the protection of audiovisual performances, a draft treaty text for convening a diplomatic conference for exceptions and limitations for people with printed disabilities, and a work plan for the protection of broadcasting organizations. The Delegation called for that exercise to be guided by Cluster B of the Development Agenda, particularly Recommendations 15 and 22.

"509. The Delegation of the United States of America, speaking on behalf of Group B, pointed out that during the previous Committee sessions, the agenda item on the Development Agenda recommendation reporting was dealt with after all substantive items. Group B understood that the procedures in the SCCR should not create a precedent.

"510. The Delegation of the European Union wanted to hear views of the members on the contributions the Committee had made in the implementation of the Development Agenda. It added that the discussions on the contribution of WIPO bodies to the Development Agenda recommendations should in principle take place after discussions and conclusion of the other agenda items, since the objective of the discussion on the

development coordination mechanism was to take into account and to report on all of the work and, in particular, on the results of the Committee.

“511. The Delegation of India, speaking on behalf of the Development Agenda Group (DAG), expressed its satisfaction for the conclusion and thanked all Member States for the spirit of accommodation and flexibility. The Group believed the 45 recommendations of the WIPO Development Agenda adopted by the WIPO General Assembly in 2007 were immediately relevant to the ongoing work in that Committee, and therefore welcomed the opportunity to speak about how the SCCR was integrating the Development Agenda into its work. The DAG welcomed in particular the work plan agreed to at the 21st SCCR session that integrated rule-setting in the areas of exceptions and limitations to copyright, with particular reference to persons with print and other related disabilities, as well as libraries and archives, education, teaching and research institutions. The Group recognized the value of copyright in encouraging creativity and cultural development. It believed that with exceptions and limitations in key areas would allow governments to strike the necessary balance in their intellectual property systems to ensure that those rights did not adversely affect access to knowledge and culture to disadvantaged segments of the population, especially those in developing countries. Therefore, the Group welcomed the progress being made on the persons with print disabilities treaty and looked forward to an early and positive conclusion of it to allow the vast population of visually impaired and print disabled persons to access, enjoy and derive benefits from the wealth of printed literature around the world. The Group also looked forward to similar progress being made with regard to similar initiatives in the area of libraries, archives and education, as outlined in the SCCR work program. The Group remained committed to those discussions and optimistic about constructive engagement in that dialogue with all WIPO Member States. The Group was also encouraged by the forward movement in that session on the two long-pending draft treaties under discussion, namely on the protection of audiovisual performances and on the protection of broadcasting organizations. The Group hoped that the agendas on the substantial instruments would be resolved and progress towards their finalization while moving in the same direction on the draft treaty for limitations and exceptions for visually impaired persons. The Group reiterated the importance to ensure that all those norm-setting proposals were treated on par, and there was no second class treatment to any particular issue or community. The Group also hoped that the Development Agenda recommendations, especially those pertaining to norm setting in Cluster B would fully take into account when finalizing the instruments. The Group expressed satisfaction with the progress made. To that end, the Group looked forward to an early and positive conclusion of binding international legal instruments on all of the three ongoing norm-setting initiatives in the SCCR.

“512. The Delegation of Brazil expressed its views on the contribution of the implementation of the Development Agenda and believed that should be a model adopted by all relevant WIPO bodies. Since the approval at the last meeting of the work program on exceptions and limitations to visually impaired persons, libraries, archives and persons with print disabilities, the Committee had been on the right path to implement the Development Agenda recommendations, which called for the need for balances in all WIPO normative activities. The need for balance had already been acknowledged in the WIPO Copyright Treaty, which stated “recognizing the need between the rights of authors and the larger public interest, particularly education, research and access to information as referred to in the Berne Convention.” The DAG thought it was important there was no second class treatment on the issue of exceptions and limitations. The Delegation further stressed that there was no reason why the Committee should be discussing a treaty for the benefit of actors and even for the benefit of broadcasting organizations, and not for the

benefit of the blind. The Delegation pointed out the need to look further into that issue to find a sufficient and adequate solution. It agreed with the statement made by the European Union that the item should be the last substantive item in the agenda so as to assess what had been decided upon.

“513. The Delegation of Pakistan, speaking on behalf of the Asian Group, acknowledged the inclusion of the new agenda item on implementation of the relevant recommendations and the work of the SCCR. The Group believed that the 45 recommendations of the Development Agenda adopted in 2007 were directly relevant to the work of the Committee. The Group encouraged the work and discussions in the SCCR regarding norm-setting on limitations and exceptions which were an essential part of the positive agenda in WIPO. In particular, the Delegation welcomed the work program which was agreed during the 21st session of the SCCR that looked for norm-setting in the areas with exceptions and limitations to copyright. The Delegation highlighted that Cluster B should form the norm-setting in the SCCR.

“514. The Delegation of the Philippines, referring to the statements of the Delegation of Pakistan and the Delegation of India, was encouraged by the progress made in the area of norm-setting in the Committee. To make the recommendations of the Development Agenda more meaningful, the Committee should also seriously look into the maintenance of robust public domain and copyright regimes which would serve as equations of new knowledge, follow-on innovation and enable low cost access to information for developing countries, particularly the least-developed countries. In the future, the Committee needed to revisit norms and standards embodied in various treaties administered by WIPO, particularly regarding works fallen into the public domain.

“515. The Delegation of Barbados supported the statement of the Delegation of India as well as the statement from the Delegation of Brazil. It reiterated that there should be no second class treatment given to print disabled persons. While the SCCR was supporting the protection of audiovisual performances and the protection of broadcasting organizations, the Committee could surely support a treaty for the visually impaired and print disabled persons.”

24. *The General Assembly is invited to:*

(i) take note of the information contained in this document; and

(ii) encourage the Standing Committee on Copyright and Related Rights to continue its work regarding the issues reported on in this document.

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